the weekly
Standard

AUGUST 4 / AUGUST 11, 2003

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IN LIBERATED IRAQ
Stephen F. Hayes

Gay Marriage and Beyond

Maggie Gallagher
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RPS AND GREENHOUSE GAS EMISSIONS AMENDMENTS TO THE SENATE ENERGY BILL

COULD HIT AMERICANS WHERE IT'LL HURT THE MOST.

Right in the family budget. The Senate should reject costly and unnecessary amendments to S.14 — the Energy Policy Act of 2003. Mandates on greenhouse gas emissions and Renewable Portfolio Standards (RPS) for electricity will lead to higher energy prices for consumers.

Instead of these **one-size-fits-all federal mandates** that will harm our economy, the Senate should stay with a proven strategy of promoting renewable energy through incentives and funding for research and development allowing states to develop programs to meet their individual needs. And, the Senate should support voluntary programs to mitigate greenhouse gas emissions. America doesn't need RPS and greenhouse gas emissions mandates, and Americans don't need higher energy costs.

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the weekly Standard

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Boss Dingell and the Outside Agitator

Ward Connerly sure knows how to get under John Dingell's skin. The point man in passing California's Proposition 209 in 1996, Connerly is supporting a Michigan initiative that would similarly ban race preferences in state hiring and university admissions. This provoked Michigan's famously bullying congressman into writing an astonishing letter that suggests Dingell would be right at home in the Democratic party of George Wallace, circa 1963. Here is Dingell's July 9 letter to Connerly, as posted on the congressman's website, followed by excerpts from Connerly's July 21 response:

Mr. Connerly:

The people of Michigan have a simple message to you: go home and stay there. We do not need you stirring up trouble where none exists.

Michiganders do not take kindly to your ignorant meddling in our affairs. We have no need for itinerant publicity seekers, non-resident troublemakers or self-aggrandizing out-of-state agitators. You have created enough mischief in your own state to last a lifetime.

We reject your "black vs. white" politics that were long ago discarded to the ash heap of history. Your brand of divisive racial politics has no place in Michigan, or in our society. So Mr. Connerly, take your message of hate and fear, division and destruction and leave. Go home and stay there, you're not welcome here.

With every good wish,
Sincerely yours,
John D. Dingell
Member of Congress

Connerly replied as follows:

Congressman Dingell,

Thank you for such a warm and hospitable welcome to Michigan. . . . Ironically, your advice is the echo of southern segregationists who sought the comfort of states' rights to practice their discrimination against black Americans. . . . There is such an eerie similarity between them and you that it bears comment.

- George Wallace, Lester Maddox and others who shared their rabid and abhorrent views believed in treating people differently on the basis of skin color . . . and so do you.
- They wanted to practice their brand of racism free from the interference of "meddling, outside agitators" . . . and so do you.
- They called those who disagreed with them and merely wanted to exercise their right to assemble "carpetbaggers" and "non-resident troublemakers" who were "stirring up trouble where none exists" . . . and so do you.
- They were arrogant and intolerant bullies . . . and so are you.

Your letter is a prime example of why the texture of civil discourse in our nation is so coarse. . . . You ought to be ashamed of telling any American citizen to "go home and stay there." You say that I am not welcome in Michigan and that the "people of Michigan" don't want me there. . . . I must ask whether you have run your "get out of town" sermon by the hundreds of other Michiganders who have called, written and e-mailed me to come to Michigan and assist in the restoration of the principle of "equal protection under the law"?

You have said I am "stirring up trouble where none exists." That certainly isn't what I hear from other prominent people in Michigan or what I have read in the dailies of your state. . . .

It defies credulity that you could be so out of touch with your state as to not recognize the racial tension that lies within, much of which has been engendered by racial preferences at the University of Michigan.

I note with great interest that Reverend Jesse Jackson has announced his intention to open an office of his Rainbow Coalition in Benton Harbor. Would you please be kind enough to send me a copy of your letter to him demanding that he "go home and stay there." I understand that he is also a non-resident of Michigan. . . .

With equally good wishes.
Sincerely,
Ward Connerly ♦

The Iraqis Get It Right

Here are three reasons to be optimistic about the new Iraqi Governing Council, all taken from a transcript of their first news conference, which was broadcast on Al Jazeera TV on July 13.

(1) They understand that the BBC doesn't wish them well. Said Jalal Talabani, leader of the Patriotic Union of Kurdistan, in reply to a snotty question from the BBC's James Reynolds: "The BBC always tries to distort Iraq's news. [Applause] During the war, we filed official messages to the British government to protest at the BBC's bias towards the former regime. [Applause] . . . Why [do you] underestimate the [council's] powers and say they are limited?"

(2) They understand that Al Jazeera doesn't wish them well. Said Nasir Kamil Al-Chadirchi, a 70-year-old Sunni Arab lawyer from Baghdad and head of the National Democratic party: "I have an appeal for Al Jazeera and other Arab satellite channels. I

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tell them: enough incitement of the Iraqi people to carry out acts of [word indistinct] [Applause]. We know our citizens more than you do and we love our people more than you do. Thank you." Then Muhammad Bahr al-Ulum, a prominent Shia cleric, chimed in: "We had expected the Arab satellite channels since the first day of the war not to side with the defunct regime. We stood by the Arab nation at all times, but, unfortunately, these satellite channels betrayed us and did not stand by us [Applause]. We have been firewood for their battles [Applause]."

(3) They understand that the Arab League does not wish them well. Said Muwaffaq al-Rubay'i, "We wished that the Arab League had taken a stand towards the crimes of the Saddam regime. The Arab League's stand towards the Iraqi people should demonstrate more sympathy and understanding. The events are clear to all. The Arab League must understand and deal with this step, that is, the formation of the first Iraqi representative authority that enjoys acceptance and credibility. Otherwise, this will lead to uncalled-for isolation, which will not be in the interest of the Iraqi people or the Arab brethren. We want the Arab brothers to understand that the defunct regime is gone for good and that it will never return, and that a new Iraq is being born." ♦

The *New York Times*'s Shoe Confusion

The *New York Times* devoted a page of its travel section on July 20 to what it described as the Transportation Security Administration's "shoe fetish." This refers to the scrutiny of travelers' shoes at airports ever since shoebomber Richard Reid tried to blow up an airplane with his plastique sneakers.

The *Times* reporter had lots of complaints: Airport procedures have been "inconsistent." Passengers have "no idea what to expect at the airport." Frequent travelers say that the screening of shoes is "seemingly arbitrary." One traveler points out that "even within the same airport, it's not really consistent." Another complains that screening is "capricious" and "difficult to predict."

In all of this, the reporter and the whiners miss the obvious: If the procedures were consistent, predictable, and passengers knew what to expect, they would be that much more easily evaded and defeated by terrorists. To quote Homer Simpson, "D'oh." ♦

Great Moments in Journalistic Principle

Penthouse magazine may be on the verge of bankruptcy, but "there are some of us who still believe in this magazine," one employee told *Newsweek*'s Seth Mnookin last week. "She asked not to be named because, she said, magazine staffers had been told that speaking publicly could jeopardize their future positions at the magazine. 'Plus, it's not like there's a lot of other jobs out there.'" ♦

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Casual

The Attack on the Hot Dog

The $19 hot dog has arrived. I came into this valuable news through the *Wall Street Journal*, which reports that they are gussying up hot dogs in New York and Los Angeles. The $19 dog is available at a joint called the Old Homestead. A Kobe beef frankfurter, it is "parboiled and served with Kobe beef chili, Cheshire cheese sauce, and Vidalia onions." If you're looking to cut back, you can get a mere $16 dog at the Belvedere in Beverly Hills, where the dog is made of chicken thigh meat and *foie gras*, served with oven-dried tomato ketchup and morel mushroom and onion relish.

Demographically, this is food, clearly, for people of whom Barnum said one was born every minute. The promotion through upgrading of what is essentially working-class food for the palates of the wealthy has been around a long time. The lunch *spécialité de la maison* at a club I belong to is corned-beef hash with an egg on top. Cassoulet, an old French peasant dish, can be found in three-star restaurants for stratospheric prices.

Yet until now one might have thought that there would be no way to upgrade the hot dog, that "cartridge," as H.L. Mencken once called it, "made from the sweepings of the abattoir." Chicago, "Hog Butcher to the World," in the words of that old bullthrower Carl Sandburg, had more and larger abattoirs than anyone else, and as a Chicagoan born and bred, I suspect that my own number of cartridges consumed has easily exceeded a thousand. The last one I bought, at a Cubs-Brewers game a couple of weeks or so ago, cost $3, which I thought high priced, but I had no choice.

Most of the hot dogs of my youth came in for around 25 cents. Fifteen cents more bought a small brown bag of fresh-cut and splendidly greasy French fries. (In those Edenic times, grease was not yet thought artery-choking but instead was considered a flavor-enhancer.) As a boy between the ages of 13 and 18, I would wolf down a hot dog at odd hours during the day or night; when my friends and I had dogs for lunch, we'd usually have two, with fries and a fine, belch-producing Pepsi-Cola.

The best hot dogs in Chicago were produced either by the Vienna or the David Berg sausage company. They were bright red, with thick skins. We ate them with yellow mustard, piccalilli, and chopped onions—never ketchup, which was considered *outré*. Ask in those days for Poupon mustard, and I could not have answered for the consequences. (Some people liked to add hot green peppers.) A properly steamed bun with poppy seeds was the finishing touch. I could go for one now, hold the peppers.

Darren Gygi

Every subject has its connoisseurship, hot dogs included. In Chicago, we never put sauerkraut on a hot dog because the kraut was felt, rightly, to compete with the flavor of the dog. The same applies to chili on a hot dog—*verboten*. Lettuce and tomatoes occasionally show up on Chicago hot dogs; so, too, mayonnaise, but one assumes such barbarities have been requested by bumpkins.

I once read that the Boston journalist George Frazier III used to bring his own hot dogs to Fenway Park, and pay the vendors the cost of the park's regular dogs to put them on the grill. A nice touch, yet here the purist would argue that hot dogs oughtn't to be grilled—again, because of the interfering taste of charcoal—but boiled, so that the rich blatant spiciness of the dogs emerges to the highest power.

The grilled sausages of my youth were Polish sausages served with French's Mustard and fried onions. I remember the powerfully tantalizing smell of them on Sunday morning visits to Maxwell Street, Chicago's oldest and most exotic flea market, which contained Gypsy fortune-tellers and black men who knew more Yiddish than a lot of Reform rabbis now under 40. I occasionally eat a Polish sausage sandwich at a ballgame, if I am in a death-defying or suicidal mood. They seemed slightly dangerous even when I was a kid; in those days we referred to them as polio sausages. Like so much that is not good for you, they are delicious.

The combination of vanity and the lust for health has reduced my intake of hot dogs radically. I may now eat fewer than 10 a year. Hot dog stands are still endemic in Chicago; not half the man I used to be, I drive by them without looking sideways.

Along with the difficulty that hot dogs present to the health-minded, along with the attack on them in the form of gentrification by dopey upscale restaurants, hot dogs now have something of an image problem. "Hot-dogging" has come to mean showing off; to be a "hot dog" is to be someone deliberately outrageous. Better, I suppose, to be a hot dog than a turkey (a hopelessly inelegant loser), but still bad enough.

The old hot dog is on its way to becoming an endangered species. What, as Lenin asked in another context, is to be done? Grab a dog for lunch, my advice is, and tell them, please, hold the *foie gras*.

Joseph Epstein

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July, 1928

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So the next time someone says they built the phone system, remember that the company that actually built it believes America's local phone system belongs to the people of America — and no one else.

AT&T

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Iraq and Roll

As Tom Donnelly notes in "Why Iraq's Still a Hard Place" (July 21), while opponents of the liberation of Iraq have been using the difficult aftermath to suggest the war should never have been fought, Iraq is not Vietnam—as shown by a recent porch collapse in Chicago that killed almost as many people as have been killed by hostile fire in postwar Iraq.

We shouldn't be surprised the 100,000 criminals released by the regime before its collapse, along with the remnants of the Baath party, have been engaged in lawlessness and random attacks. We should be surprised that we have met so *little* resistance in a nation of 26 million.

Most of this resistance would evaporate if Saddam were found. And many of those who would help us rebuild Iraq remain fearful of his return, remembering what happened in his torture chambers and in the mass graves all over Iraq.

Daniel John Sobieski
Chicago, IL

Spy vs. Spy

Harvey Klehr and John Haynes, in their letter of July 21 ("Spy Games"), rely on government documents to contend President Harry Truman was unaware of the Venona decryptions of coded Soviet cable traffic that exposed massive Soviet penetration of the U.S. government from 1939 to 1945. Those documents do not reveal an unfortunate political decision by a president who has been posthumously elevated to the historical elite of the nation's leaders.

In "The Origins of McCarthyism" (June 30), I cited *Sacred Secrets* by Jerrold L. Schecter and Leona P. Schecter, which points to Truman's culpability. Their book contradicted the claims by the late Senator Daniel Patrick Moynihan in his book *Secrecy* that Truman was not informed of the Venona decryptions by the "bureaucracy." Klehr and Haynes base their conjectures on the Moynihan book. The heart of the dispute is the account by a living witness to these long ago events. Former National Security Agency officer Oliver Kirby told the Schecters and confirmed to me how the Venona material was presented to Truman by General Omar Bradley. The Schecters say they discussed Kirby's testimony with Moynihan but the senator and his researchers never contacted Kirby. "Although we discussed Kirby's information with him on the phone and tried to make an appointment," the Schecters say of Moynihan, "he was never available, despite promises of a meeting."

Klehr and Haynes contend there is no indication of what General Carter Clarke, head of Army code-breaking, discussed with Truman when he briefed the president on June 4, 1945. Kirby contends that the decoding of the Soviet cables was

far enough along at that point for Clarke to discuss its general content with Truman.

Klehr and Haynes contend the Schecters could not account for a 1949 FBI memo in which Admiral Earl Stone, head of the new Armed Forces Security Agency, proposed briefing Truman on Venona. But Kirby, who was not reading the memo for the first time two generations later, describes in detail carefully constructed access to brief Truman set up for Bradley and Defense secretary James Forrestal.

While Klehr and Haynes call Kirby's account "highly unlikely," none of his recollections is contradicted as they claim. Kirby's assertions that Truman knew are based on notes he made at the time he worked on Venona, contradicting the Klehr and Haynes dismissal of Kirby's recollections "fifty years after the event."

The highly praised work by Haynes and Klehr on Venona was based primarily on documents supplied and edited by the government. As serious historians, they would have benefited had they conducted interviews with living participants in the Venona affair rather than engage in unfair and unwarranted attacks on the Schecters and me.

Robert D. Novak
Washington, DC

California Tremors

Fred Barnes left out one point in "Another Political Earthquake" (July 21): Gray Davis will never permit the electorate to throw him out of office.

Instead, Davis will watch the returns. If he loses, he'll simply resign before the election is certified. The lieutenant governor (a Hispanic Democrat) then succeeds him as governor, and the "winner" is left with nothing but a legal battle in the courts.

If you think this scenario is farfetched, consider the legal precedent from Arizona. In 1988, an impeachment conviction removed Governor Evan Mecham from office while his recall election was pending. The Arizona Supreme Court cancelled that election, holding that you cannot recall an officeholder who no longer holds the office.

Walter Lee Jackson
Phoenix, AZ

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Less Safe and Less Secure?

"George Bush has left us less safe and less secure than we were four years ago."
—Rep. Richard A. Gephardt (D-Mo.), July 22, 2003

President Bush's 16 words on uranium and Africa in his January State of the Union address—"The British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa"—have become famous, or infamous. But Dick Gephardt's 16 words, spoken in the course of a major foreign policy speech this past Tuesday, are the ones that matter.

Bush's words, though probably a mistake, didn't change anything. The vote to authorize war had taken place months before. The arguments for and against war had all been made and re-made. The October 2002 National Intelligence Estimate—even if one accepts the State Department's modest dissent to one of its findings—shows that the president acted in good faith in making his case about the danger of Saddam's quest for weapons of mass destruction.

Dick Gephardt's 16 words, by contrast, change everything. They reflect the considered judgment of a centrist Democratic presidential candidate—one who voted to authorize the war—that his party must stand in fundamental opposition to the Bush foreign policy. They indicate the capture of the Democratic party by the pace-setter in the presidential race, former Vermont governor Howard Dean.

Dean said on June 22 that "we don't know whether in the long run the Iraqi people are better off" with Saddam gone, and "we don't know whether we're better off." At the time, Gephardt demurred from Dean's agnosticism.

Ruben Gamarra / Notimex

Now, exactly one month later, Gephardt is following in Dean's footsteps.

Actually, Gephardt went further than Dean. I suppose it's technically possible that things could turn out worse for the Iraqi people, or for us, post-Saddam (though I'd be happy to take that bet, and I'm sure the Bush campaign would too). But Gephardt has laid down an extraordinarily clear marker for judging the Bush administration: He claims we're less safe and less secure than we were four years ago.

Is this the case? Were we safer and more secure when Osama bin Laden was unimpeded in assembling his terror network in Afghanistan? When Pakistan was colluding with the Taliban, and Saudi Arabia with al Qaeda? When Saddam Hussein ruled Iraq? When demonstrations by an incipient democratic opposition in Iran had been crushed with nary a peep from the U.S. government? When we were unaware that North Korea, still

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receiving U.S. food aid, had covertly started a second nuclear program? When our defense budget and our intelligence services were continuing to drift downward in capacity in a post-Cold War world?

Are we not even a little safer now that the Taliban and Saddam are gone, many al Qaeda operatives have been captured or killed, governments such as Pakistan's and Saudi Arabia's are at least partly hampering al Qaeda's efforts instead of blithely colluding with them, the opposition in Iran is stronger, our defense and intelligence budgets are up, and, for that matter, Milosevic is gone and the Balkans are at peace (to mention something for which the Clinton administration deserves credit, but that had not yet happened as of four years ago)?

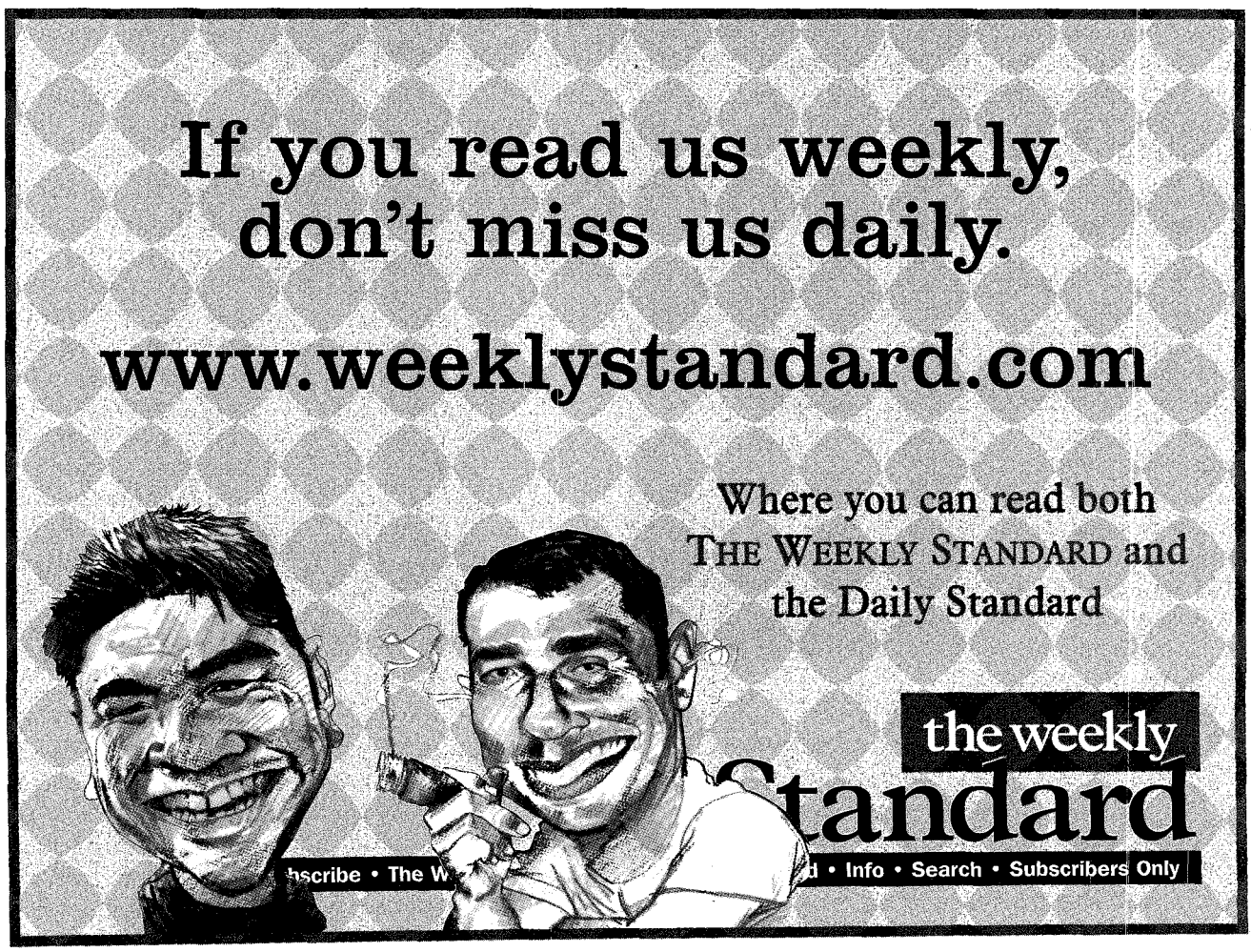
Is it reasonable to criticize aspects of the Bush administration's foreign policy? Sure. The initial failures in planning for postwar Iraq, the incoherence of its North Korea policy, the failure adequately to increase defense spending or reform our intelligence agencies . . . on all of these, and other issues as well, the administration could use constructive, even sharp, criticism. But that we were safer and more secure four years ago?

Gephardt has made a claim that will come back to haunt him and his fellow Democrats.

Bill Clinton understands this. Tuesday evening, hours after Gephardt's speech, he suggested in a television interview that rather than debate the past, "we ought to focus on where we are and what the right thing to do for Iraq is now." Indeed, he (implicitly) warned his fellow Democrats that "we should be pulling for America on this. We should be pulling for the people of Iraq." Clinton knows the Democrats cannot allow themselves to be seen as the party that begrudges American successes in struggles against our enemies. (Could he have this in the back of his mind: The Democrats continue to move in this suicidal direction, the administration flounders on other fronts, and a fresh face rides to the rescue in the fall—Hillary Clinton!)

There are plenty of legitimate grounds to criticize the Bush administration's foreign policy. But the American people, whatever their doubts about aspects of Bush's foreign policy, know that Bush is serious about fighting terrorists and terrorist states that mean America harm. About Bush's Democratic critics, they know no such thing.

—*William Kristol*



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Naomi Saenz, Senior Staff Consultant Public Affairs Programs for Verizon – Volunteer at Mi Escuelita, Dallas, Texas
Having books read to her as a child was one of Naomi's favorite activities. That pastime slowly became her passion later in life. That's why now she reads stories to the children of Mi Escuelita to help them have a better future.

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Of Prisons and Palaces

Notes from liberated Iraq.

BY STEPHEN F. HAYES

Abu Gharib Prison, Iraq

I MAY BE THE FIRST PERSON in history to have been happy to be inside Abu Gharib prison. The facility, just west of Baghdad, was the heart of Saddam Hussein's torture apparatus. On this day, however, the temperature had reached above 120 degrees, and the sun was relentless. The prison at least provided some shade.

I came as one of six reporters accompanying a small delegation led by Deputy Defense Secretary Paul Wolfowitz. We were halfway through a four-day tour of Iraq. With our base in Baghdad, we raced from city to village in a sweeping arc from the Shiite south to the Kurdish north. We returned most nights to the capital and slept in an outlying building on the grounds of one of Saddam Hussein's opulent palaces—also named Abu Gharib.

The palace was built in 1999, as U.N. sanctions were bringing economic devastation to most of Iraq. The grounds extend for miles—it takes us 13 minutes to drive from the main palace to the exit—and feature several manmade lakes filled with water that looks artificially blue. Handrails lead down into the water from a patio overlooking the lakes. Outdoor showers are available in small stalls adjacent to the patio—or were. The palace today is without running water, a casualty of a stray American bomb. One building just down the road from the main palace was hit hard. There was intelligence that Uday Hussein had been hiding there, we're told—a report that at first sounds plausible but becomes less believable each time I hear it over the course of the trip. It seems every building damaged during the war was thought to have held Uday Hussein. But physical evidence of the war here is generally scarce.

Hanging from the ceiling in the foyer of the main palace is a massive chandelier, maybe 100 feet in diameter. The floors and most of the walls are marble. Most of the furnishings are gold or are painted to look like gold. One soldier calls the style "Saudi gaudy."

Abu Gharib Prison

Wally Santana / AP

There could hardly be a greater contrast than with the prison of the same name. It sits surrounded by the vast and dry nothingness that is the terrain outside of Baghdad. The ground around the prison is littered with soda cans, plastic wrappings, pieces of paper, and razor wire.

The inside smells like fresh paint. American soldiers living and working here are repainting the walls of one wing. Although many coalition officials favored shutting the place down—the mere mention of its name can induce physical sickness among Iraqis—the country lacks another high-security detention center. So it's expected to operate for the next three years at least.

The soldiers have done a good job. But just down the hall from the wing they have fixed up are several stark reminders of the atrocities committed here. The two coalition officials guiding us through the facility take us first to one of its execution chambers. On the ceiling are two well-secured handles that look like the grips from a pommel horse. The rope is tied to these. Twelve feet below, two large square holes have been cut into the cement floor. And in a basement below, there is a wide berth for the vehicles used to remove the bodies.

Bill Irvine is one of those in charge of the prison. He is a slight, balding man with a pink complexion. His sing-song Irish accent seems incompatible with his words. "One of the former guards that I interviewed in recent weeks told me that on one particular day there were as many as 66 persons executed in this chamber. They had refrigeration and cooling rooms for 80 bodies at a time. And they carried out the executions on a Wednesday and a Sun-

Stephen F. Hayes is a staff writer at THE WEEKLY STANDARD.

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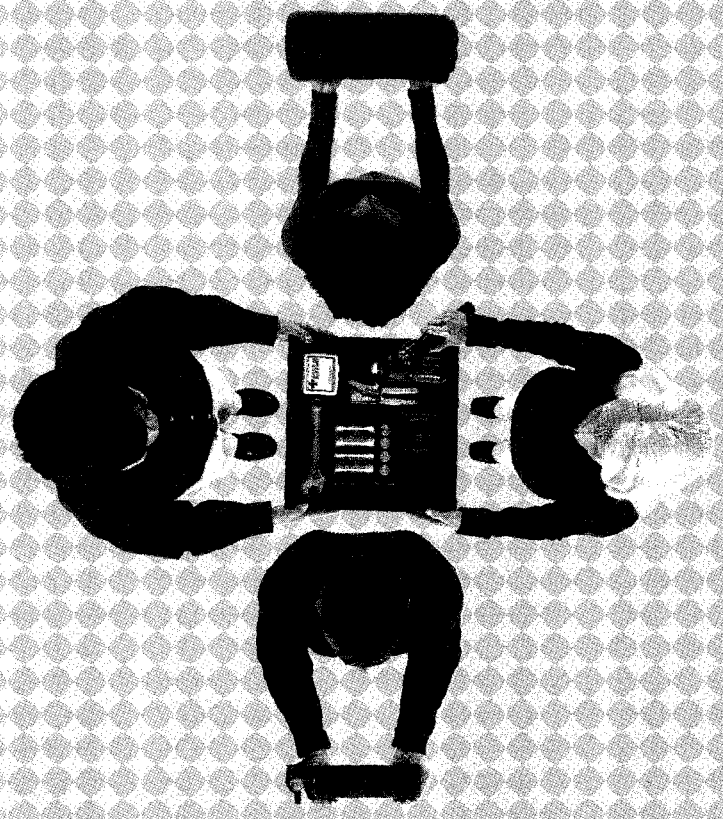

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day—very regularly on both those days. It was very seldom that there were no executions here."

The assembly-line killing that took place within these walls accounts for a far lower death toll than the 300,000 estimated to lie in the mass graves now being dug up at scores of sites around the country. Still, "as many as 30,000 were executed here in this prison," Irvine explains. "There are reports—unsubstantiated reports—but there are reports of at least 100,000 people killed in this prison."

The killing continued as the regime was on its way to extinction. "Even three days before the prison closed," Irvine says, "I am told that there were executions here."

The prison closed on October 10, 2002. Saddam Hussein issued a decree freeing nearly all of the common criminals—some 70,000 from Abu Ghirab alone—and some of his political prisoners. There are many things that might explain postwar looting and security problems. This is one of them.

"Many of those prisoners were charged and imprisoned for very, very serious crimes," Irvine continues. "Especially in Baghdad, the military forces have been arresting people who were actually released here. So we believe that a high percentage of the people who were released are actually involved in criminality now in Baghdad." Many Iraqis who survived their sentences here have returned since their country was liberated on April 9.

As we walk down the hall towards the dining facility, now a makeshift sleeping room for hundreds of American soldiers, one Iraqi walking with us stops me and another American. We are not quite sure what he's doing with the group—perhaps he's a contractor or a former guard. He grabs the electrical wires hanging from the wall of one cell, applies them to his body, and shakes violently, as if being shocked.

The walls of the cafeteria are decorated with pictures and tributes to Saddam Hussein. Our interpreter translates: "All love and faith to our leader, Saddam Hussein." "Say yes, yes to leader Saddam Hussein." "There's no life without the sun, and no dignity without Saddam."

On one wall, accompanied by a 15-foot mural of Saddam wearing 1970s retro-porn sunglasses, is a mock prison identification card for Iraq.

Father: Saddam Hussein
Mother: Arab Nation
Title: Leader of Victory and Peace
Date of Birth: 17th of July
Type of Blood: Arab milk
Place of Birth: Under the Shade of a Palm Tree
Distinguishing Marks: The tattoo of sincerity
Profession: Knight of the Arab nation
Address: From the Gulf to the Ocean
Place of Birth: In the heart of every Arab citizen
Ideology: Socialist Baath Arab Party
Writer of this ID: The Arab nation

"The horror of this place and the kinds of things that went on here I think can help you understand why the fear of Saddam Hussein hasn't left this country, especially because people are convinced that he's still alive," said Wolfowitz after the tour.

Bill Irvine says plans are in place to make most of the prison a memorial. "It'll be a reminder for many, many years of what happened here."

One might expect a visit to Abu Ghirab would stir reflections on the most profound matters—the nature of evil, the existence of God. Instead, I could not shake words I'd read in the *Washington Post* of July 15, 2003, the day before I'd left for Iraq. Reporting on the likelihood of stepped-up attacks on coalition forces on July 17, a national holiday under the previous regime, Kevin Sullivan wrote: "Although Iraq's new Governing Council's first official action was to abolish Hussein-era holidays, July 17 still stands for Saddam in a country deeply unsure if the military occupation is better than his dictatorship."

A country deeply unsure if the military occupation is better than his dictatorship. Could this be true? What about the question put so well in a headline over a column by Michael Kelly in that same newspaper just weeks before his untimely death: "Who Would Choose Tyranny?" Could it be that Iraqis might actually prefer despotism to freedom, so long as the despot was one of their own?

Judging from dozens of interviews with Iraqis, U.S. soldiers, and representatives of humanitarian and aid groups over the course of our trip, the answer is no. Most Iraqis are overjoyed about their liberation. The American troops I spoke with, even those from units that have suffered postwar casualties, said they have received a warm welcome from their hosts. But most surprising were the strong words of praise for postwar Iraq from NGO leaders. If even some of what this delegation heard is true, the reconstruction of Iraq is going much better than reports in the American media suggest.

In Najaf on July 19, Wolfowitz met with the new city council. In this Shiite holy city, as elsewhere throughout the country, Iraqis had a two-part message. "You have done tremendous things for Iraq," said Haydar al Mayalli, the interim governor. "You still have a heavy responsibility towards our country. You have commitments that must be filled to the Iraqi people. And we are grateful that you have opened the door to democracy and freedom."

A local sheikh spoke next. "By destroying the instruments of terrorism and the Baath party, the people of Najaf breathe in relief," he said. He listed infrastructure, electricity, water, and security as Najaf's most pressing needs, before reminding Wolfowitz of the stakes. "The world is watching you to see what you do."

Wolfowitz acknowledged the importance of the transition and complimented those on the council for their participation. "We know that the people of the south—partic-

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DOD

Paul Wolfowitz with Major General David H. Petraeus, commander of the 101st Airborne

ularly this city—have suffered more than others. For their memory, we have an obligation to succeed in the tasks you described. The great cities for Shia Islam are setting a model for democratic Iraq."

The council in Najaf had been in existence for just two weeks. Its 22 members were elected from a larger group assembled from leaders of the brand new professional associations and civic organizations that are springing up, alongside new political parties, unions, and religious groups. It is an encouraging first step.

Similar councils exist in most major cities in Iraq, including Basra, Karbala, Baghdad, Mosul, and Kirkuk. In Kirkuk, an oil-rich city in the north, coalition officials brought together a delegation of 300 local leaders representing each of the religious and ethnic groups in the city. That group then elected an interim council of 30 members, which in turn picked a mayor, a deputy mayor, and three assistant mayors. That was two months ago. Wolfowitz met with the council on July 21.

"I would like to express my thanks to you and George Bush for taking this courageous decision," said Kamal Kirkuki, a Kurdish assistant mayor, "even though some other nations objected and the United Nations did nothing to liberate us from this tyrant."

Here, too, Wolfowitz was greeted with a mix of gratitude and pleas for help. Asked Dr. Amed Nasser Azzo, a council member, "When is it possible to establish media in Iraq to compete with Arab satellite television that agitates for instability in Iraq?"

Earlier Monday, Wolfowitz met in Mosul with representatives of various nongovernmental and humanitarian organizations working in Iraq. Much of the meeting, which featured groups like the United Nations and Save the Children, was made near incomprehensible by a blizzard of acronyms. The comments I could understand were striking. One representative of the U.N. office of humanitarian assistance said, "We have gotten fantastic cooperation from the U.S. military's civil affairs teams." An Iraqi man from Suleimaniya, now working for the Mines Action Group, offered similar praise, and so did an American, a recent Johns Hopkins graduate working for the Research Triangle Institute. Interestingly, not one of the dozen or so humanitarian workers in the room used the word "occupation." All of them referred to the intervention as "the liberation."

America's challenges in free Iraq are significant. Those of us traveling with Wolfowitz heard about them in detail. Power is intermittent and unpredictable. Water isn't yet available at prewar levels. Jobs are scarce. Conspiracy theories about American motives are rampant. And security on the streets of Iraq is woefully lacking.

But most of those problems are solvable. Meanwhile, most doomsday predictions haven't come true. Few oil fields were set on fire. Iraq's majority Shiite population has resisted meddling from Iran. The Shiites didn't commit revenge killings against the Sunnis. There is no move by the Kurds to secede. There was no humanitarian crisis. There was no mass starvation. The "Arab street" was quiet. And "friendly" Arab governments never fell.

The 12 years of containment between the two Gulf wars were costly for the Iraqis. Counting only the mass graves and the executions at Abu Gharib, several hundred thousand at least lost their lives while Saddam Hussein was "kept in his box."

"If you'd say, 'Go through another 12 years of containment,' after seeing what we saw," says Wolfowitz, "I mean, that's impossible to argue." He added, "Some people say war is intrinsically immoral. This one wasn't." ♦

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Legally Dead

This is war. Skip the hand-wringing about "assassinations." BY JOHN YOO

THE KILLING of Uday and Qusay Hussein last week by American forces in Iraq has reopened the question of the deliberate targeting of enemy leaders. "Pursuing with intent to kill violates a long-standing policy banning political assassination," asserted George Gedda of the Associated Press. "It was the misfortune of Saddam Hussein's sons . . . that the Bush administration has not bothered to enforce the prohibition."

Critics worry that the specific targeting of the sons (and seconds in command) of Saddam Hussein—like the Bush administration's decapitation attack at the outset of the Iraq war, and its two subsequent strikes aimed at killing the tyrant himself—represents a dangerous retreat from American policy banning the assassination of foreign leaders. In addition, they say it will invite reciprocal attacks on American leaders and create power vacuums in hostile regimes. As the intelligence expert Thomas Powers recently wrote in the *New York Times*, "Mr. Hussein is not the only figure in danger of sudden death in Iraq at the moment, and it is a tossup who is in greater danger—Mr. Hussein or Paul Bremer?"

In both the war in Iraq and the war against al Qaeda, the Bush administration has made killing enemy leaders a tool of national policy. As well it might: Seeking to kill the enemy commander may be more faithful to the principles behind the laws of war than other means. Over the centuries, the developing laws and customs of war have sought to reduce the harm to noncombatants and to limit the use of force to that proportional to military objectives. By specifically targeting enemy leaders—which can be done with minimal collateral damage, thanks to precision-guided munitions—the United States can decapitate enemy forces and thus save civilian and combatant lives, reduce destruction, and hasten the end of wars.

AP/Wide World Photos

The late Qusay (left) and Uday Hussein

Even now, finding and eliminating Saddam Hussein himself is likely to accelerate reconstruction, as followers of the Baathist regime lose hope, and the Iraqi people lose their fear of a restoration of the *ancien régime*. What some might call assassination, and what the laws of war deem a legitimate military attack, in the end could be a more humanitarian way to conclude the Iraq war and to conduct hositilities generally in the future.

The benefits of precisely killing enemy leaders extend even more clearly to the war against the al Qaeda network. President Bush reportedly has given the CIA broad powers to kill senior al Qaeda leaders. The war in Afghanistan saw several reported missile strikes on individuals thought to be Osama bin Laden. Last winter, the CIA reportedly launched a Hellfire missile that killed al Qaeda leader Qaed Salim Senyan al-Harthi while he drove a car in Yemen. This attack may have prevented al Qaeda operatives from receiving information and resources, and thus may have saved civilian victims.

No law prohibits the targeting of specific enemy leaders in war. Assassination is different: the murder of a public figure for political reasons. The murders of Martin Luther King Jr., John F. Kennedy, and Abraham Lincoln were assassinations. By contrast, the killing of the enemy in combat is protected by the laws of war. As Hugo Grotius, the father of international law, observed in 1646, "It is permissible to kill an enemy." Legitimate military targets include not just foot soldiers, but the command and control structure of an enemy's military, leading up to its commander in chief.

Therefore, it is perfectly legitimate for the United States to kill Hussein's sons, and ultimately Hussein himself, just as it is to kill members of the Iraqi military who continue to fight against the coalition. It is legal for the Armed Forces to use a Hellfire missile to kill Osama bin Laden and his lieutenants, who are enemy combatants in a war with the United States. While President Ford and his successors have banned assassinations by executive order, killing Hussein or bin Laden would not be an assassination but a lawful

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use of force against an enemy in war.

Killing enemy personnel is the very purpose and means of conducting warfare. While international law prohibits killing an enemy "treacherously," this has never been understood to prohibit the targeting of specific military leaders. Rather, it is a ban on soldiers' disguising themselves as civilians or Red Cross workers, or otherwise seeking to blur the line between combatants and noncombatants in order to give themselves a military advantage. It does not prohibit the use of surprise, ruses, or stealthy tactics to kill enemy personnel.

The United States and its allies have long employed what some might loosely, but incorrectly, think of as assassination in order to kill enemy military leaders. In World War II, for example, the United States downed a Japanese aircraft in the Pacific for the specific purpose of killing Admiral Yamamoto. During the Korean War, intercepted intelligence allowed Navy bombers to kill 500 senior Chinese and North Korean military officers and security forces in 1951 during a planning conference. These deaths were not assassinations, but the legitimate result of armed combat, just as the killing of Adolf Hitler during World War II by an air or commando assault would have been legitimate.

Saddam Hussein and his sons, or Osama bin Laden and his lieutenants, should receive no different treatment. They are the military leaders of enemy forces engaged in wars with the United States, wars that have been initiated by the president and supported by Congress. While major combat operations may have ended in both Iraq and Afghanistan, the state of armed conflict with both the former Iraqi regime (as demonstrated by recent attacks on U.S. occupation forces) and al Qaeda (as shown by its efforts to attack American personnel and facilities) continues. Killing both sets of leaders is a legitimate method for defeating the enemy and bringing the conflicts to a close. ♦

Base Anger

Why Howard Dean is leading the Democratic pack. BY CHRISTOPHER CALDWELL

By early spring, journalists and political activists had begun to notice that former Vermont governor Howard Dean had a knack for firing up crowds. He was little known and badly financed, but his issues were unfudged and easy to understand: budget-balancing, civil unions for gays, a middle-of-the-road states-rights position on guns, and implacable opposition to the war in Iraq. Tying them all together was a hostility to George W. Bush that bordered on loathing. Dean has called the Bush administration a collection of "right-wing wackos," and last week, at a meeting on a New Hampshire lawn, he bluntly described the president's promise to unite Americans as "a lie."

Only in the last month has the general public remarked on Dean's rise. Democrats admire his candor. He's within two points of John Kerry in the latest University of New Hampshire poll on the primary there, taken in early July. In mid-month, one New Hampshire Republican who is considering a statewide bid polled a small sample of Democrats and Independents and found Dean at 30 percent, Kerry at 26 percent, and the others clustered in single digits.

Watching Dean pile up support is like watching Albert Pujols go after baseball's Triple Crown: He's not at the top of every category, but he's the only guy within striking distance of winning each one. Dean could conceivably win Iowa, which Kerry cannot; he could conceivably win New Hampshire, which Dick Gephardt cannot. If Dean wins Iowa, Gephardt's presidential hopes are finished; if Dean wins New Hampshire, Kerry's are badly wounded. People are beginning to speak of a "two-tier" race in New Hampshire and Iowa, with Dean joining Kerry and (to be charitable) Gephardt in tier one. But even that may underestimate Dean's strength. It's more accurate to say the race has become Howard Dean versus a half-dozen blow-dried shills for an intellectually exhausted party who are now, as one New Hampshire newspaper put it, "scurrying around New Hampshire—boring people."

The turning point for Dean came with the release of his second-quarter fundraising tally. At $7.5 million, Dean outraised all his fellow candidates. The amount of money was less important than the way he raised it: through 45,000 donors, 80 percent of whom gave under $250 apiece, and many of whom were enticed into the campaign by the Internet site *MeetUp.com*. These contributions are matchable by the Federal Election Commission in a general election, meaning that Dean, should he be nominated, will be able to tap election funds the others lack. What's more, these small contributions—unlike much of the financial support of the other Democratic candidates—would be quite legal even if the temporary restraining order on campaign finance reform were lifted.

But these itty-bitty donations have a symbolic value, too. The Democratic party is a wishbone of proletarian sloganeering and plutocratic direction that, when snapped, always leaves one side disillusioned. Racial and lifestyle minorities provide the electoral ballast for the party, true. But outside of those categories, the Democrats are the party of America's crème de la crème—not

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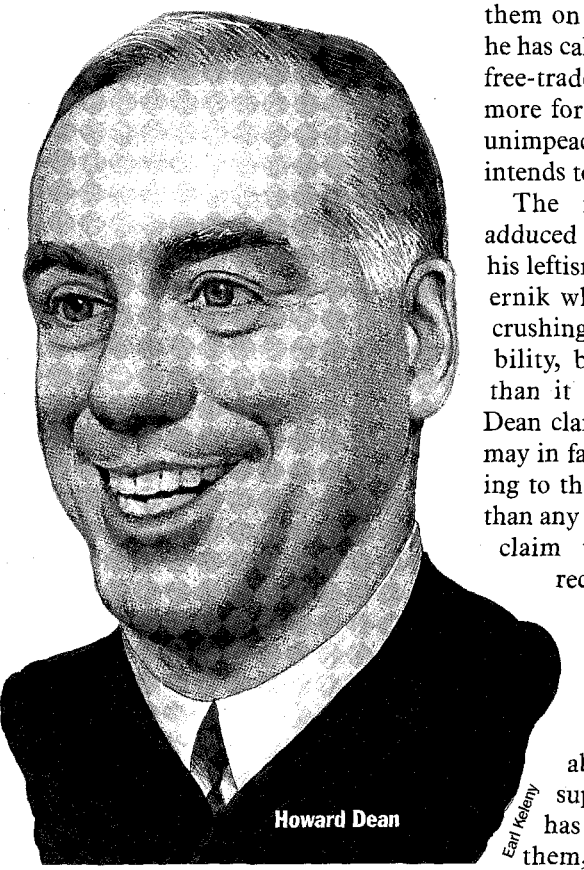
just the "cultural elite," as Dan Quayle put it, but the elite, period. Overwhelming evidence for this came in the form of a June study by the nonpartisan Center for Responsive Politics. It found that Republicans outraise Democrats by 63 percent to 37 percent among penny-ante donors—those who give under $200. The GOP retains that advantage at all levels up to $100,000, although it steadily narrows as the dollar amount rises. Once you hit $100,000, the Democrats really begin to clean up. They hold a fundraising advantage that widens rapidly as the numbers get more stratospheric. In contributions of over $1 million, they outraise Republicans by 92 percent to 8 percent.

Dean may have risen by attracting a base of fundraisers who are the same people as those the party claims, increasingly implausibly, to speak for. Nonetheless—or, perhaps, *therefore*—many Democrats are asking whether he is "electable." Among these doubters are the architects of two consecutive losses in national elections. Their skepticism seems premature. Those Democrats who dismiss Dean as unelectable are making an assessment of what non-Democratic voters think, and this is a subject on which Democrats have been driven into a frenzy of illogic by their dislike of George W. Bush. The current self-serving self-delusion—one reads it in *Doonesbury* and hears it from Nancy Pelosi and a variety of marginal commentators and celebrity knownothings—is that Republicans have succeeded because their message is stupid and simple and dishonest; and Democrats have failed because they're so subtle and principled. Under this logic, Democrats will do best by nominating a malevolent sleazeball and getting him to shout at the top of his lungs. Suffice it to say that this logic is identical to that upon which Republicans built a string of defeats in the Clinton years.

But there is no concrete political reason why Dean should be less electable than any of his rivals. People forget that "electability" used to be a synonym for "large advertising budget." Dean has the latter; therefore he has the former. Those who wonder whether his issue appeal is broad enough forget how far John McCain got attacking on a far narrower front. Another rap on Dean is that his "social libertarianism"—by which is meant his support for gay civil unions—is going to destroy him in the South. But any Democratic candidate will be destroyed in the South. The only one with a chance of appealing to social conservatives is Joe Lieberman. But since the Congressional Black Caucus singled out Lieberman for condemnation on July 9, and since Kweisi Mfume attacked him (along with Gephardt and Dennis Kucinich) for not singing for his supper at a July 14 NAACP roundtable, it is abundantly clear that the black establishment has made it a priority to sabotage his candidacy. Their reasons can only be guessed, but the upshot can be stated plainly: Without black support, Lieberman can't compete in the South, either.


Howard Dean

Earl Keleny

A more subtle version of this southern critique is that Dean is so regionally limited that he will let the president "get the South on the cheap," as the political scientist Merle Black puts it, allowing Bush to concentrate resources in the battleground states of the upper Midwest. But at least Dean has a strategy for these de-industrialized Midwestern areas. He seems poised to contest them on a protectionist platform—he has called for a renegotiation of *all* free-trade treaties—which is only a more forthright version of how the unimpeachably "electable" Gephardt intends to run.

The main piece of evidence adduced for Dean's unelectability is his leftism—he's an antiwar McGovernik who will lead his party to a crushing defeat. It's a distinct possibility, but it seems less probable than it did just a few weeks ago. Dean claims to be a centrist, and he may in fact have an easier time moving to the center after the primaries than any of his rivals. The key to this claim would be his budgetary record. Specifically, Dean balanced eleven budgets in Vermont, a state without a balanced-budget amendment. While his Democratic rivals hem and haw about how they didn't *really* support Bush's tax cuts, Dean has actually promised to undo them, raising taxes across the board to combat the deficit. With the exception of Gephardt, none of the candidates has spoken out as passionately as Dean on this score.

Certainly Dean has his weaknesses. His military service record does not, to put it mildly, bear comparison with John Kerry's. (After getting a military deferment for a back ailment, he moved to Aspen, Colorado, where he boasted of spending 80 days on the ski slopes in a single winter.) And Dean often worsens public misgivings about his lack of military experience with his off-the-

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cuff foreign policy remarks, such as his pooh-poohing of the killing of Uday and Qusay Hussein.

There is also something phony about Dean's small-state image. His roots in Vermont stretch back not to its dairy-farming past but to its colonization by Ivy League progressives since the 1960s. He can show an occasional arrogance, which might derive from his having been born into the upper reaches of Manhattan high society, the son of an art appraiser and several generations of stockbrokers. And Dean can practice the very shiftiness he purports to critique, as when he refused to tell Tim Russert on *Meet the Press* how his Vermont civil-unions law differs from gay marriage. ("I can't answer that question because it's a legal question.")

But Dean has one overriding strength, and that strength is always in the news. The key to Dean's electoral hopes is George W. Bush. *New Republic* journalist Jonathan Cohn is one of the few to have stated as much with an appropriate baldness. "If Dean isn't really so liberal," Cohn asked in a recent article, "why do so many liberals love him? A big reason is that he seems as angry as they are." Dean has convinced Democratic voters that he is simply *madder* at the president than his rivals are—and less capable of doing business with the forces Bush represents. That is the real nature of his extremism. Some Democrats worry—Cohn's *New Republic* colleague Jonathan Chait, for instance—that Dean will paint himself into a corner by automatically taking the position diametrically opposed to the president's. That may indeed limit Dean's flexibility and cause him trouble in the general election. But the Democratic nominee will be chosen by a base that demands nothing less.

As for the general election, Republicans seem unaware of how riled up Democratic activists remain, even three years after the 2000 elections. A substantial segment of the party's base has been radicalized to the point where it *does not recognize the legitimacy of the Bush presidency*. This is a very different thing than mere dislike of a president. It means that Democrats are prepared to fight this election as if they were struggling to overthrow a tyrant. One fears that 2004 could wind up—in its rhetoric and its electoral ethics—as the dirtiest general election campaign in living memory. It is not a condemnation of Dean to say that his rise provides another piece of evidence that this fear is well founded. ♦

A Moral Majority

Soccer moms are more anti-abortion than you think. BY MARK STRICHERZ

FAYE WATTLETON, former president of Planned Parenthood, announced some "alarming" news in late June. Her organization, the Center for the Advancement of Women, had commissioned Princeton Survey Research Associates to do a major study on contemporary feminism. The result was "Progress and Perils: A New Agenda for Women," a 140-page report on women's views on a range of issues, including abortion. The central finding: Far from wanting abortion as readily available as botox or tattoos (1.3 million abortions took place in 2000), most women oppose the procedure. As Wattleton wrote in the introduction, "There is significant and growing support for severe restrictions on abortion rights."

Of 3,329 women surveyed, 51 percent wanted to ban abortion altogether or to limit it to cases of rape, incest, and where the mother's life is endangered. Another 17 percent said the procedure should be available under stricter limits than now apply. At a time when pro-choice feminists repeatedly invoke the magical three-word phrase "right-wing extremist" to describe President Bush's judicial nominees, the study's results are alarming indeed.

You might think that pro-lifers would be overjoyed by the news. Instead, many have been busy feeling bitter because the press largely ignored the study (only *USA Today* and the *Washington Times* ran stories about it). In his syndicated column, L. Brent Bozell III seethed over the "virtual silence" that greeted this report in the "news" media.

But "Progress and Perils" doesn't just confirm that most women are pro-life. It undermines three political myths about women's views on abortion. Indeed, if you read the whole report, the study makes plain that Republicans enjoy an advantage on the abortion issue among women. And if conservatives decide to use it, they may have Faye Wattleton to thank.

The first myth the study exposes is that soccer moms are pro-choice. Ever since Clinton pollster Mark Penn coined the term, the mainstream press has depicted them as such. Fortunately, "Progress and Perils" doesn't take such generalizations for granted. The report classifies women into six groups, based on their attitudes toward women's roles and social status.

On the conservative end are the "traditionalists" and "family first women." In the middle are the "separate-but-equals" and "modern feminists." And on the left are the "movement legacies" and "advocates."

As Harvard political scientist Anna Greenberg has pointed out, "the differences among women voters are far more interesting and

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important than the differences between men and women."

Of these groups, the separate-but-equals correspond most closely to soccer moms. Largely white, they are the second-most educated group. Almost all of them think a woman can be a good mother and have a successful career simultaneously. They sound like a typical Democratic constituency.

But 42 percent of them would ban abortion altogether or limit it to the hard cases, while another 21 percent would impose some restrictions on the procedure. Thus almost two-thirds of them support, minimally, some form of restriction on abortion. Only 35 percent said they thought abortion should be widely available.

The second myth "Progress and Perils" undermines is that Republicans will lose if they openly oppose abortion. Of the six groups profiled in "Progress and Perils," four heavily favor greater curbs on the procedure. And it's not only the traditionalists (69 percent), most of whom are evangelical, and family-firsts (70 percent), most of whom are working class and live in small towns, who feel this way. So do the separate-but-equals and the center-left modern feminists (67 percent), many of whom are black and Hispanic and poor.

Of course, these figures will vary around the country. As GOP pollster Whit Ayres says, the popularity of a pro-lifer's position "depends on where you are. If you look at the Atlanta suburbs, the Dallas suburbs, the Des Moines suburbs, you get a pro-life majority." And, clearly, pockets of intense pro-choice sentiment can sneak up and bite a candidate: "Look at the Philadelphia suburbs, it was one reason Bush didn't win Pennsylvania." Still, a large majority of women can be described as opposing abortion or entertaining serious doubts about its unchecked availability.

The third myth the study calls into doubt is that most women support *Roe* v. *Wade* and *Doe* v. *Bolton*. This belief was recently conveyed in the *Washington Post* by David von Drehle in an article about the Supreme Court's decisions on abortion and civil liberties: "Polls consistently show that the majority of Americans have little appetite for reversing the court's path on social issues."

Which polls is von Drehle referring to? It certainly wasn't the poll Wattleton's organization, then called the Center for Gender Equality, took four years ago, which found that 53 percent of women favored outlawing abortion or restricting it to the hard cases—a pre-*Roe* standard. Nor could von Drehle be referring to the current study, in which 51 percent of women felt the same way.

Even before this report, the truism that Republican stands on abortion make the party unpopular with women had been undergoing revision, as evidence suggested other GOP positions actually played quite well with women.

Of course, even Republican pollsters acknowledge the difficulty of overturning *Roe* and *Doe*. As Gene Ulm of Public Opinion Strategies recently pointed out, pro-lifers "have a lot of persuasion left to do." Yet pro-choicers also have their work cut out for them.

"The poll was a big surprise," says CNN political analyst Bill Schneider, who also serves on the board of advisers for Wattleton's organization. In a June 28 story for *National Journal*, Schneider wrote, "The message [of the study] is clear: For most women today, quality-of-life issues prevail over women's rights. This shift is likely to put liberals at a distinct disadvantage in any fight over a Supreme Court nominee."

Of course, "Progress and Perils" isn't an exact road map for Republicans. It didn't ask respondents about specific abortion curbs, such as parental notification, or whether they support the procedure during the first trimester. Also, the study makes clear that some feminist principles remain popular. A strong majority of respondents say that the women's movement has helped them (60 percent) and that one need not be a mother to live a complete life (72 percent). Neither of those answers, however, is incompatible with pro-life and Republican positions.

Even before this report, the truism that Republican stands on abortion make the party unpopular with women had been undergoing revision, as evidence suggested other GOP positions actually played quite well with women. "Goodbye, Soccer Mom. Hello, Security Mom," *Time* magazine said on June 2, in an influential cover story that's been echoed in many other campaign stories. One California woman who "used to choose the candidates who were most liberal on abortion and welfare" told the magazine: "Since 9/11, all I want in a president is a person who is strong."

Republicans are listening. Dan Balz recently reported in the *Washington Post* that Bush advisers are targeting married women in general and security moms specifically. Only it's not true that national security is a strong issue, while abortion is a weak issue for Republicans, and "Progress and Perils" proves it.

A typical CNN story in September 1996 stated that Bob Dole's failure among female voters "is often attributed to Republican efforts to restrict abortion." Such conventional wisdom is mistaken. On abortion, not only are most women not pro-choice, but their position might be described as, well, Republican. ♦

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John Ashcroft, Maligned Again

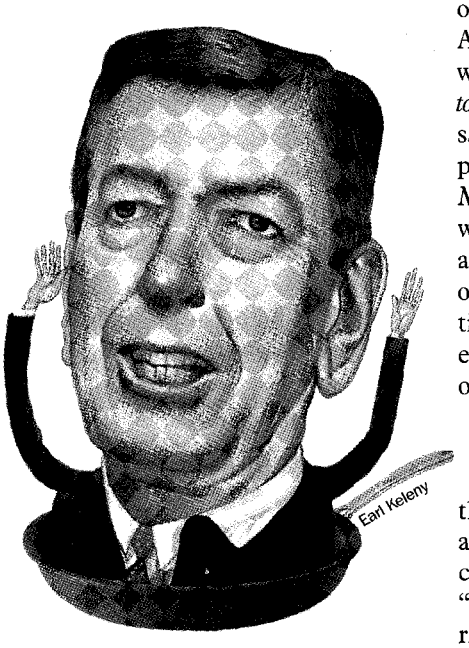
The *New York Times* tells more whoppers about the Patriot Act. BY DAVID TELL

"REPORT ON U.S. Antiterrorism Law Alleges Violations of Civil Rights"—so read the headline on the July 21 front page of the *New York Times*.

It was a scoop of sorts: The report in question, prepared by the office of Justice Department inspector general Glenn A. Fine, hadn't yet been released. It had, however, been delivered to the department's congressional overseers, one of whom, ranking House Judiciary Committee Democrat John Conyers of Michigan, arranged for a copy to be "made available" to *Times* correspondent Philip Shenon. Conyers also provided Shenon with a written statement helpfully highlighting the document's significance: "This report shows that we have only begun to scratch the surface with respect to the Justice Department's disregard of constitutional rights and civil liberties." And Shenon repaid Conyers's courtesy with a 1,200-word piece more or less explicitly concluding that, yup, that's what the IG report does, all right.

Thus, the *Times* story's lead: "A report by internal investigators at the Justice Department has identified dozens of recent cases in which department employees have been accused of serious civil rights and civil liberties violations involving enforcement of the sweeping federal antiterrorism law known as the USA Patriot Act." And, later, the scene-setting back-story: "The report is the second in recent weeks from the inspector general to focus on the way the Justice Department is carrying out the broad new surveillance and detention powers it gained under the Patriot Act"—the first report's findings having generated "widespread, bipartisan criticism" of the Bush administration.

And, later still, at the very end, Shenon's account of the fresh, purportedly damning details in Report Number Two: The IG's office appears to have been "overwhelmed by accusations of abuse, many filed by Muslim or Arab inmates in federal detention centers"—1,073 such accusations during the six months ending June 15, to be precise. Each of them "'suggesting a Patriot Act-related' abuse of civil rights or civil liberties." And 34 of them raising what the IG's report called "credible Patriot Act violations on their face."



Is 34 a frightening lot? The *Times* gave its readers no means to judge this obvious question, apparently believing it self-evident that the answer was "yes." And similarly automatic thinking characterized most of the catch-up coverage published by competing major papers the following day; with a few notable exceptions, even the best of these stories generally tracked the *Times* version. This, even though these better stories, many of them, were sprinkled through with quotations and information hinting—correctly—that the *New York Times*'s original report was dead wrong: crippled by a fundamental factual error and, therefore, thoroughly misleading.

For example: Three-quarters of the way down Toni Locy's *USA Today* dispatch ("Report Outlines Rights Violations in Sept. 11 Act"), we learned that . . . well, actually, "The report does not cite any examples of alleged abuse of the powers provided by the Patriot Act." Moreover, three-quarters of the way down Susan Schmidt's *Washington Post* story, the best of the bunch, we saw quoted the inspector general's principal deputy, a man named Paul Martin, explaining that the report wasn't really "about" the Patriot Act at all. "This report is not an assessment of the Patriot Act as a piece of legislation," Martin said. And "[i]t doesn't examine the department's use of Patriot Act authorities," either.

What the report does do, instead, is comply with a provision of the Patriot Act, Section 1001, requiring the inspector general to make semiannual submissions to Congress concerning his receipt and review of "complaints alleging abuses of civil rights and civil liberties by employees and officials of the Department of Justice." Notice: that's *all* alleged civil rights abuses, not just those that might arise as a consequence of the Patriot Act or in connection with the war on terrorism.

Indeed, the inspector general's office has since made clear that only a "tiny fraction" of the complaints at issue in his latest report have even the remotest connection to the exercise of law enforcement powers granted by the Patriot Act. And none of this tiny fraction is among the 34 allegations the report deems "credible . . . on

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their face." In other words: The only thing "Patriot Act-related" about the vast majority of the complaints discussed in the IG's report is the fact that it's the Patriot Act which obliges him to discuss them in the first place.

Just the same, the overall numbers involved are interesting. And they do suggest something meaningful about the Ashcroft Justice Department's reputation for "disregard of constitutional and civil rights"—something an innocent *New York Times* subscriber would never expect.

Whether or not it's fair to say that the IG's office has been "overwhelmed" by the resulting workload, it's certainly the case that civil rights protests lodged against Justice employees are sharply on the rise. During the previous six-month reporting period, June through December 2002, Glenn A. Fine and his staff received 783 complaints "in which the complainant makes any mention of a civil rights or civil liberties violation, even if the allegation is not within the [inspector general's] or the [department's] jurisdiction, or the allegation appears unsupported on its face." Those 1,073 total complaints the IG has more recently tabulated, then, represent a 37 percent upward spike.

And yet the absolute number of complaints judged "credible on their face" has remained almost perfectly flat: 34 this time, 33 the time before. The other 1,039 are either misdirected, involving gripes against people who don't work at the Justice Department; or not stuff properly considered a "civil rights" issue ("e-mails from individuals asking about the status of immigration paperwork they had submitted to the INS," for instance); or altogether "unrelated," as the IG report gently puts it ("individuals who claim they are under 24-hour surveillance by the CIA" and "non-detained individuals who claim they are being tortured by the government"—that kind of thing).

Bottom line: People are more and more likely to accuse the Justice Department of doing them wrong—which only stands to reason, since the *New York Times* and its hundreds of imitators have spent the past two years telling them that John Ashcroft is raping the Constitution. But it's less and less likely that those accusations are "credible."

And "credible" is not the same thing as "true," incidentally. A fair bit of last week's IG report was devoted to the disposition of "credible" allegations first identified in earlier reports. Most remain unsubstantiated. And all the worst of them—like the American-Arab Anti-Discrimination Committee's claim that an INS detainee in Texas was forced to eat pork, beaten, "had six teeth extracted against his will," and was then denied medical treatment—turned out to be false. ♦

Peking Ducks

When it comes to North Korea, China is no help at all. BY JOHN J. TKACIK JR.

"THE CHINESE have been very helpful in this North Korea problem," a senior administration official assured me earlier this week. Then he paused and thought for a minute. "Well . . . strike 'very,'" he hedged.

The steady stream of Chinese vice foreign ministers passing through Washington over the past three weeks said all the right things in private. China is "adamantly opposed" to the nuclearization of the Korean peninsula, they declared. The problem, said one administration official, is that "they haven't done anything."

The administration is torn between trying to keep the Chinese "in the process" by pushing Beijing to host talks with Pyongyang, and venting frustration with Beijing for basically taking Pyongyang's side in the talks. As the Americans know, Chinese envoys warn Pyongyang that "those Americans are just crazy enough to do something drastic"—a message some in Washington consider helpful.

The Chinese, however, have resisted any appearance of disloyalty to their North Korean comrades. On July 18, Chinese vice foreign minister Dai Bingguo spent the entire day closeted with Vice President Dick Cheney, National Security Adviser Condoleezza Rice, and Secretary of State Colin Powell. He spent more than two and a half hours with Powell convincing the American side not to push for multilateral talks with the North Koreans, especially if they include the Japanese.

This is understandable. The Chinese are not keen on being outvoted in any five-power talks, and have lobbied heavily to keep Washington's contacts with Pyongyang strictly within Beijing's ambit. Last week, the Chinese declared to the South Koreans that they agree with North Korea's stance: "North Korea considers it illogical to see Japan, which has invaded the Korean peninsula and colonized it, getting involved in the Korean peninsula affairs." In Washington, however, neither Dai nor Chinese vice foreign minister Wang Yi tried to rule out Japanese participation; each promised "to relay your position to Beijing."

To Powell's credit, he remained unpersuaded by Dai's repeated suggestions to just move to the "next step"—another United States-China-North Korea session without preconditions. "The American position remains: Any three-party session must be followed immediately—within 24 hours—by a five-party session," one State Department official says.

An example of how desperate the Chinese are to avoid five-power talks came in early July. Wang arrived in Washington for the first hand-wringing session on North Korea. It just so happened that Wang's counterparts,

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South Korean deputy foreign minister Lee Soo-Hyuck and Mitoji Yabunaka, director general of the Japanese foreign ministry's Asian office, were in town for similar talks with Assistant Secretary of State James Kelly. Kelly invited all four to a confidential dinner. Vice Minister Wang refused. "He didn't just say no," said one administration source, "he said 'hell no.'" News of such a meeting would surely leak, Wang reasoned, and China would seem to be conspiring against Pyongyang.

Instead, Beijing is signaling to Washington that it intends to remain firmly on Pyongyang's side. While two Chinese vice ministers shuttled between Washington, Beijing, Pyongyang, and Moscow, wringing their hands and urging that the United States not give up on a peaceful settlement of the North Korean crisis, China's political leaders had only nice things to say about China-North Korea ties.

On July 11, the 42nd anniversary of the Sino-Korean alliance, a vice chair of China's parliament declared that the governments of China and the Korean People's Democratic Republic (DPRK) have "pushed ahead with their cause of socialist construction" and "made important contributions to defending the peace and stability of China and Korea and, furthermore, the rest of the world, closely cooperating with each other in the international arena." Yikes!

After that, the Chinese ambassador in Pyongyang gushed that "the party, the army, and the people of the DPRK single-heartedly rallied around leader Kim Jong Il and are making a dynamic advance despite all difficulties." To ease those "difficulties," the Chinese government "donated" 10,000 tons of diesel oil to the DPRK—hardly the action of a country that wanted to rein in North Korea's reckless nuclear ambitions.

Indeed, Beijing doesn't seem that worried about North Korea's bomb. When news came in July that North Korea might finally test a nuclear device at its upcoming National Day on September 9, the most a Chinese official would tell a Reuters reporter was, "China is opposed to the *testing* of nuclear weapons on the Korean peninsula"—and he asked not to be identified. For China, it's better if Pyongyang brags about nuclear weapons and lets everyone think it poses a dire threat than to blow up a bomb and remove all doubt. Of course, the Chinese would have a much harder time in the U.N. Security Council defending North Korea's behavior if there were absolute proof of a Pyongyang bomb. So they ignore the evidence.

As far as the Chinese media are concerned, it's all American propaganda. Over the past week, Beijing's *People's Daily* reported to its 3 million Chinese readers that "Russia sees no clear evidence DPRK has nuclear weapon" and "South Koreans believe DPRK has not completed nuclear fuel reprocessing." China's official media do not tell the Chinese people what their own intelligence believes. The *Wall Street Journal* reported on July 18 that "Chinese intelligence services have concluded in recent weeks that North Korea is producing weapons-grade plutonium in sufficient quantities and has all the necessary components to assemble nuclear-tipped missiles."

The Bush administration is firm that talks with North Korea must be multilateral. North Korea's nuclear weapons program threatens all North Korea's neighbors—but particularly Japan. It violates several international obligations and commitments, and the nations most affected must also have a say in talks: South Korea, which signed the North-South Korean Denuclearization Agreement in 1991; Japan, which has given billions in economic aid to Pyongyang; and Russia, which sold nuclear reactors to the DPRK on condition that it observe International Atomic Energy Agency (IAEA) safeguards. Finally, in the infamous "pull-aside" following the April 23 talks in Beijing, the North Koreans demanded that Washington guarantee diplomatic recognition and more economic aid from Japan. Clearly, Japan must be a party to the talks—that's nonnegotiable. But there is one other factor. The North Koreans are abusive and threatening negotiators, and the Americans want witnesses from other capitals—Beijing, for one—to observe and moderate this behavior.

Beijing, however, hasn't bought in. At bottom, China is less opposed to North Korea's nuclear weapons than it is to American attempts to force Pyongyang to disarm. China's policy seems to be, "If the North Koreans can gain even more economic and energy concessions from the West without actually having to do anything in return, more power to them." China opposes even the threat of force to get Pyongyang to give up its weapons, and this is the conundrum for American policymakers. China has a stranglehold on North Korea's economy, and can deny Pyongyang's armies gasoline with the turn of a spigot.

But China is not inclined to use its leverage unless there is a clear move by the United States and affected allies to bring economic pressure and even military force to bear on Pyongyang. At least four times in the past six months, China and Russia blocked moves in the U.N. Security Council to condemn North Korea—even after the IAEA referred Pyongyang's threatening posture to the Security Council, and even after IAEA director general Mohammed ElBaradei declared on Friday, July 18, that in his view, "the situation in the DPRK is currently the most immediate and most serious threat to the nuclear nonproliferation regime."

Undersecretary of State for Arms Control John R. Bolton visits Beijing and other Asian capitals this week to keep the pressure on China. In his department, Bolton is the least amenable to humoring Chinese anxieties over North Korea, yet he is the one most sensitive to a frustrating paradox: If the administration hopes to end the North Korean nuclear confrontation without bloodshed, China must be pushed to act. But China will not act until it sees that a tragedy is imminent. Until then, the administration may want to admit that, in fact, the Chinese have not been very helpful after all. ♦

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What Marriage Is For

Children need mothers and fathers

By Maggie Gallagher

Gay marriage is no longer a theoretical issue. Canada has it. Massachusetts is expected to get it any day. The *Goodridge* decision there could set off a legal, political, and cultural battle in the courts of 50 states and in the U.S. Congress. Every politician, every judge, every citizen has to decide: Does same-sex marriage matter? If so, how and why?

The timing could not be worse. Marriage is in crisis, as everyone knows: High rates of divorce and illegitimacy have eroded marriage norms and created millions of fatherless children, whole neighborhoods where lifelong marriage is no longer customary, driving up poverty, crime, teen pregnancy, welfare dependency, drug abuse, and mental and physical health problems. And yet, amid the broader negative trends, recent signs point to a modest but significant recovery.

Divorce rates appear to have declined a little from historic highs; illegitimacy rates, after doubling every decade from 1960 to 1990, appear to have leveled off, albeit at a high level (33 percent of American births are to unmarried women); teen pregnancy and sexual activity are down; the proportion of homemaking mothers is up; marital fertility appears to be on the rise. Research suggests that married adults are more committed to marital permanence than they were twenty years ago. A new generation of children of divorce appears on the brink of making a commitment to lifelong marriage. In 1977, 55 percent of American teenagers thought a divorce should be harder to get; in 2001, 75 percent did.

A new marriage movement—a distinctively American phenomenon—has been born. The scholarly consensus on the importance of marriage has broadened and deepened; it is now the conventional wisdom among child welfare organizations. As a Child Trends research brief summed up: "Research clearly demonstrates that family structure matters for children, and the family structure that helps children the most is a family headed by two biological parents in a low-conflict marriage. Children in single-parent families, children born to unmarried mothers, and children in stepfamilies or cohabiting relationships face higher risks of poor outcomes. . . . There is thus value for children in promoting strong, stable marriages between biological parents."

What will court-imposed gay marriage do to this incipient recovery of marriage? For, even as support for marriage in general has been rising, the gay marriage debate has proceeded on a separate track. Now the time has come to decide: Will unisex marriage help or hurt marriage as a social institution?

Why should it do either, some may ask? How can Bill and Bob's marriage hurt Mary and Joe? In an exchange with me in the just-released book *Marriage and Same Sex Unions: A Debate*, Evan Wolfson, chief legal strategist for same-sex marriage in the Hawaii case, *Baer* v. *Lewin*, argues there is "enough marriage to share." What counts, he says, "is not family structure, but the quality of dedication, commitment, self-sacrifice, and love in the household."

Family structure does not count. Then what is marriage for? Why have laws about it? Why care whether people get married or stay married? Do children need mothers and fathers, or will any sort of family do? When the sexual desires of adults clash with the interests of children, which carries more weight, socially and legally?

These are the questions that same-sex marriage raises. Our answers will affect not only gay and lesbian families, but marriage as a whole.

In ordering gay marriage on June 10, 2003, the highest court in Ontario, Canada, explicitly endorsed a brand new vision of marriage along the lines Wolfson suggests: "Marriage is, without dispute, one of the most significant forms of personal relationships. . . . Through the institution of marriage, individuals can publicly express their love and commitment to each other. Through this institution, society publicly recognizes expressions of

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love and commitment between individuals, granting them respect and legitimacy as a couple."

The Ontario court views marriage as a kind of Good Housekeeping Seal of Approval that government stamps on certain registered intimacies because, well, for no particular reason the court can articulate except that society likes to recognize expressions of love and commitment. In this view, endorsement of gay marriage is a no-brainer, for nothing really important rides on whether anyone gets married or stays married. Marriage is merely individual expressive conduct, and there is no obvious reason why some individuals' expression of gay love should hurt other individuals' expressions of non-gay love.

There is, however, a different view—indeed, a view that is radically opposed to this: Marriage is the fundamental, cross-cultural institution for bridging the male-female divide so that children have loving, committed mothers and fathers. Marriage is inherently normative: It is about holding out a certain kind of relationship as a social ideal, especially when there are children involved. Marriage is not simply an artifact of law; neither is it a mere delivery mechanism for a set of legal benefits that might as well be shared more broadly. The laws of marriage do not create marriage, but in societies ruled by law they help trace the boundaries and sustain the public meanings of marriage.

In other words, while individuals freely choose to enter marriage, society upholds the marriage option, formalizes its definition, and surrounds it with norms and reinforcements, so we can raise boys and girls who aspire to become the kind of men and women who can make successful marriages. Without this shared, public aspect, perpetuated generation after generation, marriage becomes what its critics say it is: a mere contract, a vessel with no particular content, one of a menu of sexual lifestyles, of no fundamental importance to anyone outside a given relationship.

The marriage idea is that children need mothers and fathers, that societies need babies, and that adults have an obligation to shape their sexual behavior so as to give their children stable families in which to grow up.

Peter Steiner

Which view of marriage is true? We have seen what has happened in our communities where marriage norms have failed. What has happened is not a flowering of libertarian freedom, but a breakdown of social and civic order that can reach frightening proportions. When law and culture retreat from sustaining the marriage idea, individuals cannot create marriage on their own.

In a complex society governed by positive law, social institutions require both social and legal support. To use an analogy, the government does not create private property. But to make a market system a reality requires the assistance of law as well as culture. People have to be raised to respect the property of others, and to value the traits of entrepreneurship, and to be law-abiding generally. The law cannot allow individuals to define for themselves what private property (or law-abiding conduct) means. The boundaries of certain institutions (such as the corporation) also need to be defined legally, and the definitions become socially shared knowledge. We need a shared system of meaning, publicly enforced, if market-based economies are to do

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their magic and individuals are to maximize their opportunities.

Successful social institutions generally function without people's having to think very much about how they work. But when a social institution is contested—as marriage is today—it becomes critically important to think and speak clearly about its public meanings.

Again, what is marriage for? Marriage is a virtually universal human institution. In all the wildly rich and various cultures flung throughout the ecosphere, in society after society, whether tribal or complex, and however bizarre, human beings have created systems of publicly approved sexual union between men and women that entail well-defined responsibilities of mothers and fathers. Not all these marriage systems look like our own, which is rooted in a fusion of Greek, Roman, Jewish, and Christian culture. Yet everywhere, in isolated mountain valleys, parched deserts, jungle thickets, and broad plains, people have come up with some version of this thing called marriage. Why?

Because sex between men and women makes babies, that's why. Even today, in our technologically advanced contraceptive culture, half of all pregnancies are unintended: Sex between men and women *still* makes babies. Most men and women are powerfully drawn to perform a sexual act that can and does generate life. Marriage is our attempt to reconcile and harmonize the erotic, social, sexual, and financial needs of men and women with the needs of their partner and their children.

How to reconcile the needs of children with the sexual desires of adults? Every society has to face that question, and some resolve it in ways that inflict horrendous cruelty on children born outside marriage. Some cultures decide these children don't matter: Men can have all the sex they want, and any children they create outside of marriage will be throwaway kids; marriage is for citizens—slaves and peasants need not apply. You can see a version of this elitist vision of marriage emerging in America under cover of acceptance of family diversity. Marriage will continue to exist as the social advantage of elite communities. The poor and the working class? Who cares whether their kids have dads? We can always import people from abroad to fill our need for disciplined, educated workers.

Our better tradition, and the only one consistent with democratic principles, is to hold up a single ideal for all parents, which is ultimately based on our deep cultural commitment to the equal dignity and social worth of all children. All kids need and deserve a married mom and dad. All parents are supposed to at least try to behave in ways that will give their own children this important protection. Privately, religiously, emotionally, individually, marriage may have many meanings. But this is the core of its public, shared meaning: Marriage is the place where having children is not only tolerated but welcomed and encouraged, because it gives children mothers and fathers.

Of course, many couples fail to live up to this ideal. Many of the things men and women have to do to sustain their own marriages, and a culture of marriage, are *hard*. Few people will do them consistently if the larger culture does not affirm the critical importance of marriage as a social institution. Why stick out a frustrating relationship, turn down a tempting new love, abstain from sex outside marriage, or even take pains not to conceive children out of wedlock if family structure does not matter? If marriage is not a shared norm, and if successful marriage is not socially valued, do not expect it to survive as the generally accepted context for raising children. If marriage is just a way of publicly celebrating private love, then there is no need to encourage couples to stick it out for the sake of the children. If family structure does not matter, why have marriage laws at all? Do adults, or do they not, have a basic obligation to control their desires so that children can have mothers and fathers?

The problem with endorsing gay marriage is not that it would allow a handful of people to choose alternative family forms, but that it would require society at large to gut marriage of its central presumptions about family in order to accommodate a few adults' desires.

The debate over same-sex marriage, then, is not some sideline discussion. It *is* the marriage debate. Either we win—or we lose the central meaning of marriage. The great threat unisex marriage poses to marriage as a social institution is not some distant or nearby slippery slope, it is an abyss at our feet. If we cannot explain why unisex marriage is, in itself, a disaster, we have already lost the marriage ideal.

Same-sex marriage would enshrine in law a public judgment that the desire of adults for families of choice outweighs the need of children for mothers and fathers. It would give sanction and approval to the creation of a motherless or fatherless family as a deliberately chosen "good." It would mean the law was neutral as to whether children had mothers and fathers. Motherless and fatherless families would be deemed just fine.

Same-sex marriage advocates are startlingly clear on this point. Marriage law, they repeatedly claim, has noth-

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ing to do with babies or procreation or getting mothers and fathers for children. In forcing the state legislature to create civil unions for gay couples, the high court of Vermont explicitly ruled that marriage in the state of Vermont has nothing to do with procreation. Evan Wolfson made the same point in *Marriage and Same Sex Unions*: "[I]sn't having the law pretend that there is only one family model that works (let alone exists) a lie?" He goes on to say that in law, "marriage is not just about procreation—indeed is not necessarily about procreation at all."

Wolfson is right that in the course of the sexual revolution the Supreme Court struck down many legal features designed to reinforce the connection of marriage to babies. The animus of elites (including legal elites) against the marriage idea is not brand new. It stretches back at least thirty years. That is part of the problem we face, part of the reason 40 percent of our children are growing up without their fathers.

It is also true, as gay-marriage advocates note, that we impose no fertility tests for marriage: Infertile and older couples marry, and not every fertile couple chooses procreation. But every marriage between a man and a woman is capable of giving any child they create or adopt a mother and a father. Every marriage between a man and a woman discourages either from creating fatherless children outside the marriage vow. In this sense, neither older married couples nor childless husbands and wives publicly challenge or dilute the core meaning of marriage. Even when a man marries an older woman and they do not adopt, his marriage helps protect children. How? His marriage means, if he keeps his vows, that he will not produce out-of-wedlock children.

Does marriage discriminate against gays and lesbians? Formally speaking, no. There are no sexual-orientation tests for marriage; many gays and lesbians do choose to marry members of the opposite sex, and some of these unions succeed. Our laws do not require a person to marry the individual to whom he or she is most erotically attracted, so long as he or she is willing to promise sexual fidelity, mutual caretaking, and shared parenting of any children of the marriage.

But marriage is unsuited to the wants and desires of many gays and lesbians, precisely because it is designed to bridge the male-female divide and sustain the idea that children need mothers and fathers. To make a marriage, what you need is a husband and a wife. Redefining marriage so that it suits gays and lesbians would require fundamentally changing our legal, public, and social conception of what marriage is in ways that threaten its core public purposes.

Some who criticize the refusal to embrace gay marriage liken it to the outlawing of interracial marriage, but the analogy is woefully false. The Supreme Court overturned anti-miscegenation laws because they frustrated the core purpose of marriage in order to sustain a racist legal order. Marriage laws, by contrast, were not invented to express animus toward homosexuals or anyone else. Their purpose is not negative, but positive: They uphold an institution that developed, over thousands of years, in thousands of cultures, to help direct the erotic desires of men and women into a relatively narrow but indispensably fruitful channel. We need men and women to marry and make babies for our society to survive. We have no similar public stake in any other family form—in the union of same-sex couples or the singleness of single moms.

Some liken the refusal to embrace gay marriage to the outlawing of interracial marriage, but the analogy is woefully false. Anti-miscegenation laws frustrated the core purpose of marriage in order to sustain a racist order.

Meanwhile, *cui bono*? To meet the desires of whom would we put our most basic social institution at risk? No good research on the marriage intentions of homosexual people exists. For what it's worth, the Census Bureau reports that 0.5 percent of households now consist of same-sex partners. To get a proxy for how many gay couples would avail themselves of the health insurance benefits marriage can provide, I asked the top 10 companies listed on the Human Rights Campaign's website as providing same-sex insurance benefits how many of their employees use this option. Only one company, General Motors, released its data. Out of 1.3 million employees, 166 claimed benefits for a same-sex partner, *one one-hundredth of one percent.*

People who argue for creating gay marriage do so in the name of high ideals: justice, compassion, fairness. Their sincerity is not in question. Nevertheless, to take the already troubled institution most responsible for the protection of children and throw out its most basic presumption in order to further adult interests in sexual freedom would not be high-minded. It would be morally callous and socially irresponsible.

If we cannot stand and defend this ground, then face it: The marriage debate is over. Dan Quayle was wrong. We lost. ♦

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Beyond Gay Marriage

The road to polyamory

By Stanley Kurtz

After gay marriage, what will become of marriage itself? Will same-sex matrimony extend marriage's stabilizing effects to homosexuals? Will gay marriage undermine family life? A lot is riding on the answers to these questions. But the media's reflexive labeling of doubts about gay marriage as homophobia has made it almost impossible to debate the social effects of this reform. Now with the Supreme Court's ringing affirmation of sexual liberty in *Lawrence* v. *Texas*, that debate is unavoidable.

Among the likeliest effects of gay marriage is to take us down a slippery slope to legalized polygamy and "polyamory" (group marriage). Marriage will be transformed into a variety of relationship contracts, linking two, three, or more individuals (however weakly and temporarily) in every conceivable combination of male and female. A scare scenario? Hardly. The bottom of this slope is visible from where we stand. Advocacy of legalized polygamy is growing. A network of grass-roots organizations seeking legal recognition for group marriage already exists. The cause of legalized group marriage is championed by a powerful faction of family law specialists. Influential legal bodies in both the United States and Canada have presented radical programs of marital reform. Some of these quasi-governmental proposals go so far as to suggest the abolition of marriage. The ideas behind this movement have already achieved surprising influence with a prominent American politician.

None of this is well known. Both the media and public spokesmen for the gay marriage movement treat the issue as an unproblematic advance for civil rights. True, a small number of relatively conservative gay spokesmen do consider the social effects of gay matrimony, insisting that they will be beneficent, that homosexual unions will become more stable. Yet another faction of gay rights advocates actually favors gay marriage as a step toward the abolition of marriage itself. This group agrees that there is a slippery slope, and wants to hasten the slide down.

To consider what comes after gay marriage is not to say that gay marriage itself poses no danger to the institution of marriage. Quite apart from the likelihood that it will usher in legalized polygamy and polyamory, gay marriage will almost certainly weaken the belief that monogamy lies at the heart of marriage. But to see why this is so, we will first need to reconnoiter the slippery slope.

Promoting polygamy

During the 1996 congressional debate on the Defense of Marriage Act, which affirmed the ability of the states and the federal government to withhold recognition from same-sex marriages, gay marriage advocates were put on the defensive by the polygamy question. If gays had a right to marry, why not polygamists? Andrew Sullivan, one of gay marriage's most intelligent defenders, labeled the question fear-mongering—akin to the discredited belief that interracial marriage would lead to birth defects. "To the best of my knowledge," said Sullivan, "there is no polygamists' rights organization poised to exploit same-sex marriage and return the republic to polygamous abandon." Actually, there are now many such organizations. And their strategy—even their existence—owes much to the movement for gay marriage.

Scoffing at the polygamy prospect as ludicrous has been the strategy of choice for gay marriage advocates. In 2000, following Vermont's enactment of civil unions, Matt Coles, director of the American Civil Liberties Union's Lesbian and Gay Rights Project, said, "I think the idea that there is some kind of slippery slope [to polygamy or group marriage] is silly." As proof, Coles said that America had legalized interracial marriage, while also forcing Utah to ban polygamy before admission to the union. That dichotomy, said Coles, shows that Americans are capable of

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distinguishing between better and worse proposals for reforming marriage.

Are we? When Tom Green was put on trial in Utah for polygamy in 2001, it played like a dress rehearsal for the coming movement to legalize polygamy. True, Green was convicted for violating what he called Utah's "don't ask, don't tell" policy on polygamy. Pointedly refusing to "hide in the closet," he touted polygamy on the Sally Jessy Raphael, Queen Latifah, Geraldo Rivera, and Jerry Springer shows, and on *Dateline NBC* and *48 Hours*. But the Green trial was not just a cable spectacle. It brought out a surprising number of mainstream defenses of polygamy. And most of the defenders went to bat for polygamy by drawing direct comparisons to gay marriage.

Writing in the *Village Voice*, gay leftist Richard Goldstein equated the drive for state-sanctioned polygamy with the movement for gay marriage. The political reluctance of gays to embrace polygamists was understandable, said Goldstein, "but our fates are entwined in fundamental ways." Libertarian Jacob Sullum defended polygamy, along with all other consensual domestic arrangements, in the *Washington Times*. Syndicated liberal columnist Ellen Goodman took up the cause of polygamy with a direct comparison to gay marriage. Steve Chapman, a member of the *Chicago Tribune* editorial board, defended polygamy in the *Tribune* and in *Slate*. The *New York Times* published a Week in Review article juxtaposing photos of Tom Green's family with sociobiological arguments about the naturalness of polygamy and promiscuity.

Despite the divorce revolution, Americans still take it for granted that marriage means monogamy, that adultery is a transgression.

The ACLU's Matt Coles may have derided the idea of a slippery slope from gay marriage to polygamy, but the ACLU itself stepped in to help Tom Green during his trial and declared its support for the repeal of all "laws prohibiting or penalizing the practice of plural marriage." There is of course a difference between repealing such laws and formal state recognition of polygamous marriages. Neither the ACLU nor, say, Ellen Goodman has directly advocated formal state recognition. Yet they give us no reason to suppose that, when the time is ripe, they will not do so. Stephen Clark, the legal director of the Utah ACLU, has said, "Talking to Utah's polygamists is like talking to gays and lesbians who really want the right to live their lives."

All this was in 2001, well before the prospect that legal gay marriage might create the cultural conditions for state-sanctioned polygamy. Can anyone doubt that greater public support will be forthcoming once gay marriage has become a reality? Surely the ACLU will lead the charge.

Why is state-sanctioned polygamy a problem? The deep reason is that it erodes the ethos of monogamous marriage. Despite the divorce revolution, Americans still take it for granted that marriage means monogamy. The ideal of fidelity may be breached in practice, yet adultery is clearly understood as a transgression against marriage. Legal polygamy would jeopardize that understanding, and that is why polygamy has historically been treated in the West as an offense against society itself.

In most non-Western cultures, marriage is not a union of freely choosing individuals, but an alliance of family groups. The emotional relationship between husband and wife is attenuated and subordinated to the economic and political interests of extended kin. But in our world of freely choosing individuals, extended families fall away, and love and companionship are the only surviving principles on which families can be built. From Thomas Aquinas through Richard Posner, almost every serious observer has granted the incompatibility between polygamy and Western companionate marriage.

Where polygamy works, it does so because the husband and his wives are emotionally distant. Even then, jealousy is a constant danger, averted only by strict rules of seniority or parity in the husband's economic support of his wives. Polygamy is more about those resources than about sex.

Yet in many polygamous societies, even though only 10 or 15 percent of men may actually have multiple wives, there is a widely held belief that men need multiple women. The result is that polygamists are often promiscuous—just not with their own wives. Anthropologist Philip Kilbride reports a Nigerian survey in which, among urban male polygamists, 44 percent said their most recent sexual partners were women other than their wives. For monogamous, married Nigerian men in urban areas, that figure rose to 67 percent. Even though polygamous marriage is less about sex than security, societies that permit polygamy tend to reject the idea of marital fidelity—for everyone, polygamists included.

Mormon polygamy has always been a complicated and evolving combination of Western mores and classic polygamous patterns. Like Western companionate marriage, Mormon polygamy condemns extramarital sex. Yet historically, like its non-Western counterparts, it de-emphasized romantic love. Even so, jealousy was always a problem. One study puts the rate of 19th-century polygamous divorce at triple the rate for monogamous families. Unlike their forebears, contemporary Mormon polygamists try to combine polygamy with companionate marriage—and have a very tough time of it. We have no definitive figures,

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but divorce is frequent. Irwin Altman and Joseph Ginat, who've written the most detailed account of today's breakaway Mormon polygamist sects, highlight the special stresses put on families trying to combine modern notions of romantic love with polygamy. Strict religious rules of parity among wives make the effort to create a hybrid traditionalist/modern version of Mormon polygamy at least plausible, if very stressful. But polygamy let loose in modern secular America would destroy our understanding of marital fidelity, while putting nothing viable in its place. And postmodern polygamy is a lot closer than you think.

Polyamory

America's new, souped-up version of polygamy is called "polyamory." Polyamorists trace their descent from the anti-monogamy movements of the sixties and seventies—everything from hippie communes, to the support groups that grew up around Robert Rimmer's 1966 novel *The Harrad Experiment*, to the cult of Bhagwan Shree Rajneesh. Polyamorists proselytize for "responsible non-monogamy"—open, loving, and stable sexual relationships among more than two people. The modern polyamory movement took off in the mid-nineties—partly because of the growth of the Internet (with its confidentiality), but also in parallel to, and inspired by, the rising gay marriage movement.

Unlike classic polygamy, which features one man and several women, polyamory comprises a bewildering variety of sexual combinations. There are triads of one woman and two men; heterosexual group marriages; groups in which some or all members are bisexual; lesbian groups, and so forth. (For details, see Deborah Anapol's *Polyamory: The New Love Without Limits*, one of the movement's authoritative guides, or Google the word polyamory.)

Supposedly, polyamory is not a synonym for promiscuity. In practice, though, there is a continuum between polyamory and "swinging." Swinging couples dally with multiple sexual partners while intentionally avoiding emotional entanglements. Polyamorists, in contrast, try to establish stable emotional ties among a sexually connected group. Although the subcultures of swinging and polyamory are recognizably different, many individuals move freely between them. And since polyamorous group marriages can be sexually closed or open, it's often tough to draw a line between polyamory and swinging. Here, then, is the modern American version of Nigeria's extramarital polygamous promiscuity. Once the principles of monogamous companionate marriage are breached, even for supposedly stable and committed sexual groups, the slide toward full-fledged promiscuity is difficult to halt.

Polyamorists are enthusiastic proponents of same-sex marriage. Obviously, any attempt to restrict marriage to a single man and woman would prevent the legalization of polyamory. After passage of the Defense of Marriage Act in 1996, an article appeared in *Loving More*, the flagship magazine of the polyamory movement, calling for the creation of a polyamorist rights movement modeled on the movement for gay rights. The piece was published under the pen name Joy Singer, identified as the graduate of a "top ten law school" and a political organizer and public official in California for the previous two decades.

Taking a leaf from the gay marriage movement, Singer suggested starting small. A campaign for hospital visitation rights for polyamorous spouses would be the way to begin. Full marriage and adoption rights would come later. Again using the gay marriage movement as a model, Singer called for careful selection of acceptable public spokesmen (i.e., people from longstanding poly families with children). Singer even published a speech by Iowa state legislator Ed Fallon on behalf of gay marriage, arguing that the goal would be to get a congressman to give exactly the same speech as Fallon, but substituting the word "poly" for "gay" throughout. Try telling polyamorists that the link between gay marriage and group marriage is a mirage.

The flexible, egalitarian, and altogether postmodern polyamorists are more likely to influence the larger society than Mormon polygamists. The polyamorists go after monogamy in a way that resonates with America's secular, post-sixties culture. Yet the fundamental drawback is the same for Mormons and polyamorists alike. Polyamory websites are filled with chatter about jealousy, the problem that will not go away. Inevitably, group marriages based on modern principles of companionate love, without religious rules and restraints, are unstable. Like the short-lived hippie communes, group marriages will be broken on the contradiction between companionate love and group solidarity. And children will pay the price. The harms of state-sanctioned polyamorous marriage would extend well beyond the polyamorists themselves. Once monogamy is defined out of marriage, it will be next to impossible to educate a new generation in what it takes to keep companionate marriage intact. State-sanctioned polyamory would spell the effective end of marriage. And that is precisely what polyamory's new—and surprisingly influential—defenders are aiming for.

The family law radicals

State-sanctioned polyamory is now the cutting-edge issue among scholars of family law. The preeminent school of thought in academic family law has its origins in the arguments of radical gay activists who once *opposed* same-sex marriage. In the early nineties, radicals like longtime National Gay and Lesbian Task Force policy director Paula Ettelbrick spoke out against making legal marriage a prior-

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ity for the gay rights movement. Marriage, Ettelbrick reminded her fellow activists, "has long been the focus of radical feminist revulsion." Encouraging gays to marry, said Ettelbrick, would only force gay "assimilation" to American norms, when the real object of the gay rights movement ought to be getting Americans to accept gay difference. "Being queer," said Ettelbrick, "means pushing the parameters of sex and family, and in the process transforming the very fabric of society."

Promoting polyamory is the ideal way to "radically reorder society's view of the family," and Ettelbrick, who has since formally signed on as a supporter of gay marriage (and is frequently quoted by the press), is now part of a movement that hopes to use gay marriage as an opening to press for state-sanctioned polyamory. Ettelbrick teaches law at the University of Michigan, New York University, Barnard, and Columbia. She has a lot of company.

Nancy Polikoff is a professor at American University's law school. In 1993, Polikoff published a powerful and radical critique of gay marriage. Polikoff stressed that during the height of the lesbian feminist movement of the seventies, even many heterosexual feminists refused to marry because they believed marriage to be an inherently patriarchal and oppressive institution. A movement for gay marriage, warned Polikoff, would surely promote marriage as a social good, trotting out monogamous couples as spokesmen in a way that would marginalize non-monogamous gays and would fail to challenge the legitimacy of marriage itself. Like Ettelbrick, Polikoff now supports the right of gays to marry. And like Ettelbrick, Polikoff is part of a movement whose larger goal is to use legal gay marriage to push for state-sanctioned polyamory—the ultimate subversion of marriage itself. Polikoff and Ettelbrick represent what is arguably now the dominant perspective within the discipline of family law.

Cornell University law professor Martha Fineman is another key figure in the field of family law. In her 1995 book *The Neutered Mother, the Sexual Family, and Other Twentieth Century Tragedies*, she argued for the abolition of marriage as a legal category. Fineman's book begins with her recollection of an experience from the late seventies in politically radical Madison, Wisconsin. To her frustration, she could not convince even the most progressive members of Madison's Equal Opportunities Commission to recognize "plural sexual groupings" as marriages. That failure helped energize Fineman's lifelong drive to abolish marriage.

But it's University of Utah law professor Martha Ertman who stands on the cutting edge of family law. Building on Fineman's proposals for the abolition of legal marriage, Ertman has offered a legal template for a sweeping relationship contract system modeled on corporate law. (See the *Harvard Civil Rights and Civil Liberties Law Review*, Winter 2001.) Ertman wants state-sanctioned polyamory, legally organized on the model of limited liability companies.

In arguing for the replacement of marriage with a contract system that accommodates polyamory, Ertman notes that legal and social hostility to polygamy and polyamory are decreasing. She goes on astutely to imply that the increased openness of homosexual partnerships is slowly collapsing the taboo against polygamy and polyamory. And Ertman is frank about the purpose of her proposed reform—to render the distinction between traditional marriage and polyamory "morally neutral."

A sociologist rather than a professor of law, Judith Stacey, the Barbra Streisand Professor in Contemporary Gender Studies at USC, is another key member of this group. Stacey has long championed alternative family forms. Her current research is on gay families consisting of more than two adults, whose several members consider themselves either married or contractually bound.

In 1996, in the *Michigan Law Review*, David Chambers, a professor of law at the University of Michigan and another prominent member of this group, explained why radical opponents of marriage ought to support gay marriage. Rather than reinforcing a two-person definition of marriage, argued Chambers, gay marriage would make society more accepting of further legal changes. "By ceasing to conceive of marriage as a partnership composed of one person of each sex, the state may become more receptive to units of three or more."

Gradual transition from gay marriage to state-sanctioned polyamory, and the eventual abolition of marriage itself as a legal category, is now the most influential paradigm within academic family law. As Chambers put it, "All desirable changes in family law need not be made at once."

Finally, Martha Minow of Harvard Law School deserves mention. Minow has not advocated state-sanctioned polygamy or polyamory, but the principles she champions pave the way for both. Minow argues that families need to be radically redefined, putting blood ties and traditional legal arrangements aside and attending instead to the functional realities of new family configurations.

Ettelbrick, Polikoff, Fineman, Ertman, Stacey, Chambers, and Minow are among the most prominent family law theorists in the country. They have plenty of followers and hold much of the power and initiative within their field. There may be other approaches to academic family law, but none exceed the radicals in influence. In the last couple of years, there have been a number of conferences on family law dominated by the views of this school. The conferences have names like "Marriage Law: Obsolete or Cutting Edge?" and "Assimilation & Resistance: Emerging

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Issues in Law & Sexuality." The titles turn on the paradox of using marriage, seemingly a conservative path toward assimilation, as a tool of radical cultural "resistance."

One of the most important recent family law meetings was the March 2003 Hofstra conference on "Marriage, Democracy, and Families." The radicals were out in full force. On a panel entitled "Intimate Affiliation and Democracy: Beyond Marriage?" Fineman, Ertman, and Stacey held forth on polyamory, the legal abolition of marriage, and related issues. Although there were more moderate scholars present, there was barely a challenge to the radicals' suggestion that it was time to move "beyond marriage." The few traditionalists in family law are relatively isolated. Many, maybe most, of the prominent figures in family law count themselves as advocates for lesbian and gay rights. Yet family law today is as influenced by the hostility to marriage of seventies feminism as it is by advocacy for gay rights. It is this confluence of radical feminism and gay rights that now shapes the field.

Beyond conjugality

You might think the radicals who dominate the discipline of family law are just a bunch of eccentric and irrelevant academics. You would be wrong. For one thing, there is already a thriving non-profit organization, the Alternatives to Marriage Project, that advances the radicals' goals. When controversies over the family hit the news, experts provided by the Alternatives to Marriage Project are often quoted in mainstream media outlets. While the Alternatives to Marriage Project endorses gay marriage, its longer-term goal is to replace marriage with a system that recognizes "the full range" of family types.

That includes polyamorous families. The Alternatives to Marriage Project's statement of purpose—its "Affirmation of Family Diversity"—is signed not only by Ettelbrick, Polikoff, and Stacey but by several polyamorists as well. On a list of signatories that includes academic luminaries like Yale historian Nancy Cott, you can find Barry Northrup of *Loving More* magazine. The Alternatives to Marriage Project, along with Martha Ertman's pioneering legal proposals, has given polyamory a foothold on respectability.

The first real public triumph of the family law radicals has come in Canada. In 1997, the Canadian Parliament established the Law Commission of Canada to serve Parliament and the Justice Ministry as a kind of advisory board on legal reform. In December 2001, the commission submitted a report to Parliament called *Beyond Conjugality*, which stops just short of recommending the abolition of marriage in Canada.

Beyond Conjugality contains three basic recommendations. First, judges are directed to concentrate on whether the individuals before them are "functionally interdependent," regardless of their actual marital status. On that theory, a household consisting of an adult child still living with his mother might be treated as the functional equivalent of a married couple. In so disregarding marital status, *Beyond Conjugality* is clearly drawing on the work of Minow, whose writings are listed in the bibliography.

Beyond Conjugality's second key recommendation is that a legal structure be established allowing people to register their personal relationships with the government. Not only could heterosexual couples register as official partners, so could gay couples, adult children living with parents, and siblings or friends sharing a house. Although the authors of *Beyond Conjugality* are politic enough to relegate the point to footnotes, they state that they see no reason, in principle, to limit registered partnerships to two people.

The final recommendation of *Beyond Conjugality*—legalization of same-sex marriage—drew the most publicity when the report was released. Yet for the Law Commission of Canada, same-sex marriage is clearly just one part of the larger project of doing away with marriage itself. *Beyond Conjugality* stops short of recommending the abolition of legal marriage. The authors glumly note that, for the moment, the public is unlikely to accept such a step.

The text of *Beyond Conjugality*, its bibliography, and the Law Commission of Canada's other publications unmistakably reveal the influence of the radical theorists who now dominate the discipline of family law. While Canada's parliament has postponed action on *Beyond Conjugality*, the report has already begun to shape the culture. The decision by the Canadian government in June 2003 not to contest court rulings legalizing gay marriage is only the beginning of the changes that Canada's judges and legal bureaucrats have in mind. The simultaneity of the many reforms is striking. Gay marriage is being pressed, but in tandem with a registration system that will sanction polyamorous unions, and eventually replace marriage itself. Empirically, the radicals' hopes are being validated. Gay marriage is not strengthening marriage but has instead become part of a larger unraveling of traditional marriage laws.

Ah, but that's Canada, you say. Yet America has its rough equivalent of the Law Commission of Canada—the American Law Institute (ALI), an organization of legal scholars whose recommendations commonly shape important legal reforms. In 2000, ALI promulgated a report called *Principles of the Law of Family Dissolution* recommending that judges effectively disregard the distinction between married couples and longtime cohabitors. While the ALI principles do not go so far as to set up a system of partnership registration to replace marriage, the report's framework for recognizing a wide variety of cohabiting partnerships puts it on the same path as *Beyond Conjugality*.

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Collapsing the distinction between cohabitation and marriage is a proposal especially damaging to children, who are decidedly better off when born to married parents. (This aspect of the ALI report has been persuasively criticized by Kay Hymowitz, in the March 2003 issue of *Commentary*.) But a more disturbing aspect of the ALI report is its evasion of the polygamy and polyamory issues.

Prior to publication of the ALI Principles, the report's authors were pressed (at the 2000 annual meeting of the American Law Institute) about the question of polygamy. The authors put off the controversy by defining legal cohabitors as couples. Yet the ALI report offers no principled way of excluding polyamorous or polygamous cohabitors from recognition. The report's reforms are said to be based on the need to recognize "statistically growing" patterns of relationship. By this standard, the growth of polyamorous cohabitation will soon require the legal recognition of polyamory.

Although America's ALI Principles do not follow Canada's *Beyond Conjugality* in proposing either state-sanctioned polyamory or the outright end of marriage, the University of Utah's Martha Ertman has suggested (in the Spring/Summer 2001 *Duke Journal of Gender Law and Policy*) that the American Law Institute is intentionally holding back on more radical proposals for pragmatic political reasons. Certainly, the ALI Principles' authors take Canadian law as the model for the report's most radical provisions.

Further confirmation, if any were needed, of the mainstream influence of the family law radicals came with Al and Tipper Gore's 2002 book *Joined at the Heart*, in which they define a family as those who are "joined at the heart" (rather than by blood or by law). The notion that a family is any group "joined at the heart" comes straight from Harvard's Martha Minow, who worked with the Gores. In fact, the Minow article from which the Gores take their definition of family is also the article in which Minow tentatively floats the idea of substituting domestic partnership registries for traditional marriage. ("Redefining Families: Who's In and Who's Out?" *University of Colorado Law Review*, Volume 62, Number 2, 1991.) So one of the guiding spirits of Canada's *Beyond Conjugality* report almost had a friend in the White House.

Triple parenting

Polygamy, polyamory, and the abolition of marriage are bad ideas. But what has that got to do with gay marriage? The reason these ideas are connected is that gay marriage is increasingly being treated as a civil rights issue. Once we say that gay couples have a right to have their commitments recognized by the state, it becomes next to impossible to deny that same right to polygamists, polyamorists, or even cohabiting relatives and friends. And once everyone's relationship is recognized, marriage is gone, and only a system of flexible relationship contracts is left. The only way to stop gay marriage from launching a slide down this slope is if there is a compelling state interest in blocking polygamy or polyamory that does not also apply to gay marriage. Many would agree that the state has a compelling interest in preventing polygamy and polyamory from undermining the ethos of monogamy at the core of marriage. The trouble is, gay marriage itself threatens the ethos of monogamy.

The "conservative" case for gay marriage holds that state-sanctioned marriage will reduce gay male promiscuity. But what if the effect works in reverse? What if, instead of marriage reducing gay promiscuity, sexually open gay couples help redefine marriage as a non-monogamous institution? There is evidence that this is exactly what will happen.

Consider sociologist Gretchen Stiers's 1998 study *From this Day Forward* (Stiers favors gay marriage, and calls herself a lesbian "queer theorist"). *From this Day Forward* reports that while exceedingly few of even the most committed gay and lesbian couples surveyed believe that marriage will strengthen and stabilize their personal relationships, nearly half of the surveyed couples who actually disdain traditional marriage (and even gay commitment ceremonies) will nonetheless get married. Why? For the financial and legal benefits of marriage. And Stiers's study suggests that many radical gays and lesbians who yearn to see marriage abolished (and multiple sexual unions legitimized) intend to marry, not only as a way of securing benefits but as part of a self-conscious attempt to subvert the institution of marriage. Stiers's study suggests that the "subversive" intentions of the radical legal theorists are shared by a significant portion of the gay community itself.

Stiers's study was focused on the most committed gay couples. Yet even in a sample with a disproportionate number of male couples who had gone through a commitment ceremony (and Stiers had to go out of her research protocol just to find enough male couples to balance the committed lesbian couples) nearly 20 percent of the men questioned did not practice monogamy. In a representative sample of gay male couples, that number would be vastly higher. More significantly, a mere 10 percent of even this skewed sample of gay men mentioned monogamy as an important aspect of commitment (meaning that even many of those men who had undergone "union ceremonies" failed to identify fidelity with commitment). And these, the very most committed gay male couples, are the ones who will be trailblazing marital norms for their peers, and exemplifying gay marriage for the nation. So concerns about the

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effects of gay marriage on the social ideal of marital monogamy seem justified.

A recent survey of gay couples in civil unions by University of Vermont psychologists Esther Rothblum and Sondra Solomon confirms what Stiers's study suggests—that married gay male couples will be far less likely than married heterosexual couples to identify marriage with monogamy. Rothblum and Solomon contacted all 2,300 couples who entered civil unions in Vermont between June 1, 2000, and June 30, 2001. More than 300 civil union couples residing in and out of the state responded. Rothblum and Solomon then compared the gay couples in civil unions with heterosexual couples and gay couples outside of civil unions. Among married heterosexual men, 79 percent felt that marriage demanded monogamy, 50 percent of men in gay civil unions insisted on monogamy, while only 34 percent of gay men outside of civil unions affirmed monogamy.

While gay men in civil unions were more likely to affirm monogamy than gays outside of civil unions, gay men in civil unions were far less supportive of monogamy than heterosexual married men. That discrepancy may well be significantly greater under gay marriage than under civil unions. That's because of the effect identified by Stiers—the likelihood that many gays who do not value the traditional monogamous ethos of marriage will marry anyway for the financial benefits that marriage can bring. (A full 86 percent of the civil unions couples who responded to the Rothblum-Solomon survey live outside Vermont, and therefore receive no financial benefits from their new legal status.) The Rothblum-Solomon study may also undercount heterosexual married male acceptance of monogamy, since one member of all the married heterosexual couples in the survey was the sibling of a gay man in a civil union, and thus more likely to be socially liberal than most heterosexuals.

Even moderate gay advocates of same-sex marriage grant that, at present, gay male relationships are far less monogamous than heterosexual relationships. And there is a persuasive literature on this subject: Gabriel Rotello's *Sexual Ecology*, for example, offers a documented and powerful account of the behavioral and ideological barriers to monogamy among gay men. The moderate advocates say marriage will change this reality. But they ignore, or downplay, the possibility that gay marriage will change marriage more than it changes the men who marry. Married gay couples will begin to redefine the meaning of marriage for the culture as a whole, in part by removing monogamy as an essential component of marriage. No doubt, the process will be pushed along by cutting-edge movies and TV shows that tout the new "open" marriages being pioneered by gay spouses. In fact, author and gay marriage advocate Richard Mohr has long expressed the hope and expectation that legal gay marriage will succeed in defining monogamy out of marriage.

Lesbians, for their part, do value monogamy. Over 82 percent of the women in the Rothblum-Solomon study, for example, insisted on monogamy, regardless of sexual orientation or marital status. Yet lesbian marriage will undermine the connection between marriage and monogamy in a different way. Lesbians who bear children with sperm donors sometimes set up de facto three-parent families. Typically, these families include a sexually bound lesbian couple, and a male biological father who is close to the couple but not sexually involved. Once lesbian couples can marry, there will be a powerful legal case for extending parental recognition to triumvirates. It will be difficult to question the parental credentials of a sperm donor, or of a married, lesbian non-birth mother spouse who helps to raise a child from birth. And just as the argument for gay marriage has been built upon the right to gay adoption, legally recognized triple parenting will eventually usher in state-sanctioned triple (and therefore group) marriage.

This year, there was a triple parenting case in Canada involving a lesbian couple and a sperm donor. The judge made it clear that he wanted to assign parental status to all three adults but held back because he said he lacked jurisdiction. On this issue, the United States is already in "advance" of Canada. Martha Ertman is now pointing to a 2000 Minnesota case (*La Chapelle* v. *Mitten*) in which a court did grant parental rights to lesbian partners and a sperm donor. Ertman argues that this case creates a legal precedent for state-sanctioned polyamory.

Gay marriages of convenience

Ironically, the form of gay matrimony that may pose the greatest threat to the institution of marriage involves heterosexuals. A Brigham Young University professor, Alan J. Hawkins, suggests an all-too-likely scenario in which two heterosexuals of the same sex might marry as a way of obtaining financial benefits. Consider the plight of an underemployed and uninsured single mother in her early 30s who sees little real prospect of marriage (to a man) in her future. Suppose she has a good friend, also female and heterosexual, who is single and childless but employed with good spousal benefits. Sooner or later, friends like this are going to start contracting same-sex marriages of convenience. The single mom will get medical and governmental benefits, will share her friend's paycheck, and will gain an additional caretaker for the kids besides. Her friend will gain companionship and a family life. The marriage would obviously be sexually open. And if lightning struck and the right man came along for one of the women, they could always divorce and marry heterosexually.

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In a narrow sense, the women and children in this arrangement would be better off. Yet the larger effects of such unions on the institution of marriage would be devastating. At a stroke, marriage would be severed not only from the complementarity of the sexes but also from its connection to romance and sexual exclusivity—and even from the hope of permanence. In Hawkins's words, the proliferation of such arrangements "would turn marriage into the moral equivalent of a Social Security benefit." The effect would be to further diminish the sense that a woman ought to be married to the father of her children. In the aggregate, what we now call out-of-wedlock births would increase. And the connection between marriage and sexual fidelity would be nonexistent.

Hawkins thinks gay marriages of convenience would be contracted in significant numbers—certainly enough to draw the attention of a media eager to tout such unions as the hip, postmodern marriages of the moment. Hawkins also believes that these unions of convenience could begin to undermine marriage's institutional foundations fairly quickly. He may be right. The gay marriage movement took more than a decade to catch fire. A movement for state-sanctioned polygamy-polyamory could take as long. And the effects of sexually open gay marriages on the ethos of monogamy will similarly occur over time. But any degree of publicity for same-sex marriages of convenience could have dramatic effects. Without further legal ado, same-sex marriages of convenience will realize the radicals' fondest hopes. Marriage will have been severed from monogamy, from sexuality, and even from the dream of permanence. Which would bring us virtually to the bottom of the slippery slope.

We are far closer to that day than anyone realizes. Does the Supreme Court's defense of sexual liberty last month in the *Lawrence* v. *Texas* sodomy case mean that, short of a constitutional amendment, gay marriage is inevitable? Perhaps not. Justice Scalia was surely correct to warn in his dissent that *Lawrence* greatly weakens the legal barriers to gay marriage. Sodomy laws, although rarely enforced, did provide a public policy basis on which a state could refuse to recognize a gay marriage performed in another state. Now the grounds for that "public policy exception" have been eroded. And as Scalia warned, *Lawrence*'s sweeping guarantees of personal autonomy in matters of sex could easily be extended to the question of who a person might choose to marry.

So it is true that, given *Lawrence*, the legal barriers to gay marriage are now hanging by a thread. Nonetheless, in an important respect, Scalia underestimated the resources for a successful legal argument against gay marriage. True, *Lawrence* eliminates moral disapprobation as an acceptable, rational basis for public policy distinctions between homosexuality and heterosexuality. But that doesn't mean there is no rational basis for blocking either same-sex marriage or polygamy.

There *is* a rational basis for blocking both gay marriage and polygamy, and it does not depend upon a vague or religiously based disapproval of homosexuality or polygamy. Children need the stable family environment provided by marriage. In our individualist Western society, marriage must be companionate—and therefore monogamous. Monogamy will be undermined by gay marriage itself, and by gay marriage's ushering in of polygamy and polyamory.

This argument ought to be sufficient to pass the test of rational scrutiny set by the Supreme Court in *Lawrence* v. *Texas*. Certainly, the slippery slope argument was at the center of the legislative debate on the federal Defense of Marriage Act, and so should protect that act from being voided on the same grounds as Texas's sodomy law. But of course, given the majority's sweeping declarations in *Lawrence*, and the hostility of the legal elite to traditional marriage, it may well be foolish to rely on the Supreme Court to uphold either state or federal Defense of Marriage Acts.

This is the case, in a nutshell, for something like the proposed Federal Marriage Amendment to the Constitution, which would define marriage as the union of a man and a woman. At a stroke, such an amendment would block gay marriage, polygamy, polyamory, and the replacement of marriage by a contract system. Whatever the courts might make of the slippery slope argument, the broader public will take it seriously. Since *Lawrence*, we have already heard from Jon Carroll in the *San Francisco Chronicle* calling for legalized polygamy. Judith Levine in the *Village Voice* has made a plea for group marriage. And Michael Kinsley—no queer theorist but a completely mainstream journalist—has publicly called for the legal abolition of marriage. So the most radical proposal of all has now moved out of the law schools and legal commissions, and onto the front burner of public discussion.

Fair-minded people differ on the matter of homosexuality. I happen to think that sodomy laws should have been repealed (although legislatively). I also believe that our increased social tolerance for homosexuality is generally a good thing. But the core issue here is not homosexuality; it is marriage. Marriage is a critical social institution. Stable families depend on it. Society depends on stable families. Up to now, with all the changes in marriage, the one thing we've been sure of is that marriage means monogamy. Gay marriage will break that connection. It will do this by itself, and by leading to polygamy and polyamory. What lies beyond gay marriage is no marriage at all. ♦

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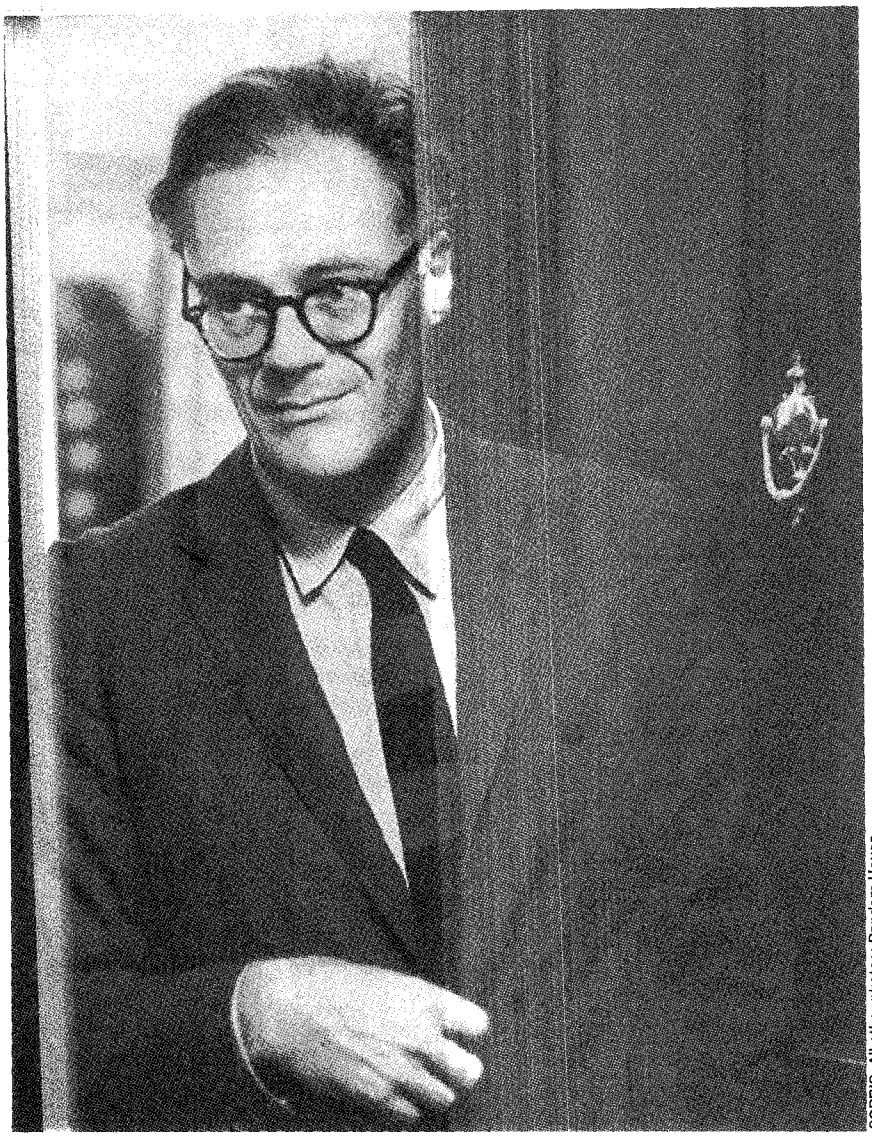
The Last Public Poet

Rereading Robert Lowell

By J. Bottum



CORBIS. All other photos: Random House.

Robert Lowell began his poetic career by espousing religion—with all the marital fidelity of a gigolo on the make. A convert at age twenty-four, he quickly lifted from his Catholic moment a complex metaphysics, a large system of artistic imagery, and a Pulitzer Prize for his first full collection of poems, *Lord Weary's Castle*, in 1946.

What he couldn't seem to get from Catholicism, however, was enough of what he went looking there to find: content, mostly—something to write about that seemed worthy of the astonishing power his poetic voice had from the very beginning of his career. Sanity, too, wasn't waiting patiently for him in the pews. And so, in the early 1950s, he abandoned the Church to chivvy, over the next twenty-five years, both his poetry and his mental health through a long series of alternatives—the diseased memories of his childhood, the corpus of world poetry, the rage of 1960s politics, the sum total of human history, and finally even his ex-wife's letters—all in the attempt to find a topic sufficient to match the ability he had to express it.

Nothing except the recreation of the world itself—nothing except being Go in fact—could have satisfied the cos c ambitions of his poetry, and it's tem ing to say that he was never really seri s about any of the subjects he too up in his writing. But even to begin thinking this way is to sound ridiculous, for Robert Lowell was perhaps the most *serious* poet America has ever known—our last poet of high seriousness, as it happens, and also our last public poet.

Collected Poems
by Robert Lowell
Farrar, Straus & Giroux, 1,200 pp., $45

There's much to dislike about the man. To read Ian Hamilton's 1982 biography *Robert Lowell*, or Paul Mariani's 1994 *Lost Puritan*, is to see that Lowell's family life was a godforsaken mess (even discounting the large portions that can be blamed on his frequent bouts of madness). To read his exchanges with Diana Trilling about the 1968 student riots at Columbia—or the brouhaha surrounding his withdrawal from Lyndon Johnson's 1965 "White House Festival of the Arts"—is to see that his politics were routinely silly (again, leaving aside the merely crazy parts). And to read even such fond portraits as Eileen Simpson's delightful 1982 memoir *Poets in Their Youth* is to see that his interventions in the literary world—over Ezra Pound's 1949 Bollingen prize, for instance, or the management of the Yaddo writers' retreat—were invariably peculiar and occasionally vicious (ignoring, one last time, the insane bits).

But to read the thousand pages of his *Collected Poems*—finally published this summer, a quarter century after Lowell's death in 1977 at the age of sixty—is also to see how little his failings matter to his poetry. Right or wrong, he had the voice of public authority, and he did his work in the public eye. *Time* magazine put Lowell on its cover in

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Lowell in the early 1920s

1967, anointing him America's national poet. The newspaper gossip columns noted his marriages and divorces. He won book awards as though they were discount coupons: the National Book Award for 1959's *Life Studies*, a second Pulitzer for 1973's *The Dolphin*, and nearly every other literary prize imaginable (except the Nobel, for which he probably died too soon; curious to think that if Lowell had lived, he would be only eighty-five today).

From the first poems he published, he seemed to belong to the great tradition of poetry; whether great or not himself, he appeared the very incarnation of literature at the time. "The age burns in me," he wrote, and he was right. A new poem from Lowell was an *event*, something to be talked about, in a way that we haven't seen since. No general reader under age forty knows what it means to have a public poet in America, and hardly any general reader over forty has followed a poet since. Poetry remains popular these days, in its fashion. But poems no longer seem things of public importance. Something went out of poetry when Robert Lowell died.

Something went out of America, as well.

In *The Armies of the Night*—an account of the 1967 anti-Vietnam march on the Pentagon that contains an astonishing amount of Lowell worship—Norman Mailer described the poet as having "the unwilling haunted saintliness of a man who was repaying the moral debts of ten generations of ancestors." The poet Elizabeth Bishop once jokingly complained that Lowell had a certain authority just because he was a *Lowell* and not, say, her Uncle Artie: Simply to recite the names in his family, from James Russell Lowell to Amy Lowell, was to talk about America itself. Robert Traill Spence Lowell IV was born in 1917 in Boston—where the Lowells talk to the Cabots, and the Cabots talk only to God—the child of three hundred years of *Mayflower* ancestors. Every other president in the history of Harvard was a relative. Boston society consisted entirely of his cousins.

Not that it made much difference while he was a child. He was banned from the Boston Public Garden for fighting, and his schoolmates nicknamed him "Cal": after the Roman emperor Caligula, according to one version of the story, or Shakespeare's Caliban, according to another version—either way, not exactly the image one wants for a boy. After his freshman year at Harvard and a knockdown argument with his weak father and overbearing mother, he fled south to spend the summer camped on the lawn of the poet Allen Tate. The Southern Fugitives quickly drew him in, and he transferred to Kenyon College, where he studied with John Crowe Ransom and became friends with fellow student Randall Jarrell.

After graduation, he converted to Catholicism, worked on his first chapbook of poems, *Land of Unlikeness*, and married the young Catholic novelist Jean Stafford. It was a curious home. Describing her life after Lowell, Stafford once explained how nice it was to live in a place where it was all right not yet to have won the Nobel prize. Lowell insisted on daily Mass and limited the family reading: "no newspapers, no novels except Dostoevsky, Proust, James, and Tolstoy." He also became what he called a "fire-breathing" conscientious objector, and in 1943 he sent an open letter to President Roosevelt and various newspapers denouncing the war and refusing to serve. It was, he later admitted, a "manic statement," but the government's hand was forced by publicity he received, and he was convicted of draft evasion, serving several months of a one-year sentence in federal prison.

The book *Lord Weary's Castle* followed in 1946. There was a little of Allen Tate in it and a lot of T.S. Eliot. But mostly it seemed a completely original stew of American Puritanism, European Catholicism, and New England history—all in service of a serious modernism, written in the traditional rhyme and meter that had seemed anathema to modernism. "The Quaker Graveyard in Nantucket" is the longest poem in the collection, and it reads almost as though John Milton had decided to rewrite *Moby-Dick*. An elegy for one of Lowell's Winslow cousins, lost at sea, it begins with hard enjambments and thick, loud lines—as though the language itself were compelled to match the topic:

A brackish reach of shoal off Madaket,—
The sea was still breaking violently and night
Had steamed into our North Atlantic Fleet,
When the drowned sailor clutched the
drag-net.

"The Drunken Fisherman," "At the Indian Killer's Grave," and many other poems in the collection turned American Puritanism into the great tradition of Catholicism—in lines that read as though they had been carved from granite. Jonathan Edwards's theology was a perpetual fascination of Lowell's, and "After the Surprising Conversions" renders as poetry one of Edwards's famous letters about New England's Great Awakening:

September twenty-second, Sir, the bough
Cracks with the unpicked apples, and at dawn
The small-mouth bass breaks water, gorged
with spawn.

What was America to make of all this? The nation decided to sink to its knees in awe. A Guggenheim fellowship followed the Pulitzer, and Lowell at age thirty was free to do anything.

What he did was divorce Stafford, leave the Church, and go insane for the

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first of what would be many times. After his recovery, he married the writer Elizabeth Hardwick, and, in 1951, published his second collection of poems, *The Mills of the Kavanaughs*. Though it contained poetry as good as "Falling Asleep Over the Aeneid," which followed the mood of *Lord Weary's Castle*, the book seemed in many ways to flounder. The title poem is a long dramatic monologue spoken by a young woman in Maine whose voice, Randall Jarrell suggested, sounded just the way a girl would sound if she were Robert Lowell—but who ever met a girl like Robert Lowell?

No one could mistake the voice in his third book, *Life Studies*, published in 1959. Suffering more breakdowns and undergoing a cycle of institutionalizations and psychiatric therapy, he rolled together autobiographical prose and poems, still rhythmical though mostly unrhymed—creating the foundational document of an entire school of American poetry, the juggernaut of the "Confessional Poets." The collection ends with its best poem, "Skunk Hour," which owes something to Elizabeth Bishop's descriptions of animals but moves in what seemed at the time like nothing else in American verse:

A car radio bleats,
"Love, O careless Love, . . ." I hear
my ill-spirit sob in each blood cell,
as if my hand were at its throat. . . .
I myself am hell;
nobody's here—

only skunks, that search
in the moonlight for a bite to eat.

Helen Vendler has noted how mild some of these poems in *Life Studies* actually are: *blue threads as thin / as pen-writing on the bedspread*. But—as Lowell described his childhood, his parents, his time in prison, and his insanity—the reviewers latched on to the shocking poems exposing his family's failures and sins. "Commander Lowell," a son's blast at the weakness and ineffectuality of his naval-officer father, is a brutal poem from beginning to end, but the cruelest moment comes in the final lines, where Lowell adds to the description of his father's meaningless old age the lines: *And once / nineteen, the youngest ensign in his class, / he was "the old man" of a gunboat on the Yangtze*.

The volume *Imitations* followed in 1961, Lowell's eccentrically chosen but brilliantly rendered set of translations of everything from ancient Greek to modern German. And then, with 1964's *For the Union Dead*, Lowell turned the confessional voice from himself to the outside world of politics and social ruin. The title poem moves from childhood memories of the "old South Boston Aquarium" to a meditation on Augustus Saint-Gaudens's bronze memorial for Robert Gould Shaw, the young white Bostonian abolitionist who was killed leading a black regiment in the Civil War: *Two months after marching through Boston, / half the regiment was dead; . . . Their monument sticks like a fishbone / in the city's throat.* The poem ends:

When I crouch to my television set,
the drained faces of Negro school-children rise
like balloons. . . .

The Aquarium is gone. Everywhere,
giant finned cars nose forward like fish;
a savage servility
slides by on grease.

The mood continued through 1967's *Near the Ocean*, with its strange amalgam of politics and Lowell's attempt to explain why he no longer believed in God in the volume's most famous poem, "Waking Early Sunday Morning": *Pity the planet, all joy gone / from this sweet volcanic cone*. But the bouts of insanity grew more frequent, and though he was, if anything, *more* political in his actions—marching on the Pentagon, campaigning for Eugene McCarthy—his poetry began to seek madly in history some connection between his jumbled brain, his jumbled politics, and the jumble of the human condition.

His private life got messy again, as well. In 1970, he left his wife Elizabeth Hardwick to take up with a married Irish woman, Lady Caroline Blackwood, whom he married in 1972 after their divorces came through.

Perhaps it's not surprising that at this point his publishing also grew confusing. He'd begun to keep a poetic journal, a sort of sonnet sequence of daily events in the newspaper and his personal life. He published it in 1969, as *Notebook 1967-68*, and then revised it to publish it again the next year as *Notebook*, and then revised it yet one more time when he published three books in 1973: *History*, which contains the political and public sonnets from *Notebook*; *For Lizzie and Harriet*, which contains the personal poems; and *The Dolphin*, which relates his abandoning of the same wife Lizzie and daughter Harriet that he celebrated in *For Lizzie and Harriet*. Just to make matters worse, *The Dolphin* uses quotations from Hardwick's private letters, splashing across the literary reviews her attempts to cope with his madness and keep their marriage of twenty years together.

Lowell published his *Selected Poems* in 1976 and his last collection, *Day by Day*, in 1977. That fall, deciding to leave his new wife for his old, Lowell flew from London to New York and died of a heart attack in the taxi on his way into Manhattan from the airport—a sixty-year-old man, carrying the painter Lucien Freud's portrait of Car-

Lowell in 1946

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Robert Lowell with his daughter Harriet in 1961.

oline Blackwood back to Elizabeth Hardwick's house.

The general reader of literature can now walk many of the poetic battlefields of the twentieth century with little more emotion than the tourist's usual wonder at how much blood was spilt to gain so little ground. Along that low wall, the Georgians made their last, doomed stand. That hilltop over there is where contemporary modernism was decided, the high mandarins easily crushing the populist, lowbrow rebellion from the likes of Vachel Lindsay, Robinson Jeffers, and Carl Sandburg. Across that nearby field the Beat berserkers once howled their way close to victory before their charge was at last turned back.

Perhaps as a result, recent school anthologies have begun to agree on something like a canon of twentieth-century American poetry. William Carlos Williams has won, and Stephen Vincent Benét has lost. Hart Crane has surprisingly faded, and Wallace Stevens has unsurprisingly shone. Delmore Schwartz has been washed under by the great wave of the world, while Sylvia Plath has made it safe to shore. Amy Lowell is out, and Robert Lowell is . . . well, what is he these days? Time will revisit some of these judgments. Time *ought* to revisit some of these judgments. But what will time make of Lowell?

This is a moment of decision about Lowell—not the final judgment of hundreds of years' reading, but a real moment, nonetheless, at which we must decide where he belongs in the pantheon, thanks to Frank Bidart, Lowell's longtime "amanuensis and sounding board," who has finally finished editing the *Collected Poems*.

The book has its peculiarities. Bidart writes in the introduction about the importance of Lowell's first chapbook, *Land of Unlikeness*, but then prints it only as an appendix. He doesn't print at all the 1970 version of *Notebook*, though he insists it is an independent work, not to be conflated with the volumes Lowell mined from it in 1973. Still, with a thousand pages of poetry and a hundred and fifty pages of judicious and informative notes, Bidart's edition of Robert Lowell's *Collected Poems* is enough to be going on with.

What makes judgment difficult is the fact that we have so few public poets with whom to compare Lowell. Poetry done in private, even by famous poets, is distinct from poetry done in public. Public poetry aims at different targets, it speaks to different purposes, and it is judged by different standards—primarily by the standard of responsibility, for it has a claim to speak, with the special insight of its unique gift of language, on what are or ought to be the public issues. And, more to the point, it has an audience that agrees to listen while it makes its claim.

As it happens, not all poetry on public events succeeds at being public poetry, in this sense. Though they'd settle for being the unacknowledged legislators of the world, all poets want really to be the *acknowledged* legislators: They want to pronounce, and they want us to listen. But, as demonstrated by the recent tempest over Mrs. Bush's attempt to invite poets to a White House tea just before the Iraq war, contemporary poetry is missing both the voice of public responsibility and the ear of the responsible public—a kind of high, morally serious agreement between poets and their readers.

Whatever that was exactly, Lowell had it. There's no denying that a great deal of his work draws in the reader brilliantly. The person who isn't mesmerized by "The Quaker Graveyard in Nantucket," "Skunk Hour," and "For the Union Dead" has forgotten what poetry is. In the middle of his career, he could finish the dramatic monologue "To Speak of Woe That Is in Marriage" with a woman's lament: *Each night now I tie / ten dollars and his car key to my thigh. . . . / Gored by the climacteric of his want, / he stalls above me like an elephant*. Later in life, he could begin "Waking Early Sunday Morning" with the lines:

> *O to break loose, like the chinook*
> *salmon jumping and falling back,*
> *nosing up to the impossible*
> *stone and bone-crushing waterfall—*
> *raw-jawed, weak-fleshed there, stopped by ten*
> *steps of the roaring ladder, and then*
> *to clear the top on the last try,*
> *alive enough to spawn and die.*

And yet, good as he was, the simple truth is that Richard Wilbur, Elizabeth Bishop, and Anthony Hecht were all better at some of the things he attempted. In retrospect, the Pulitzer committee in 1959—that *annus mirabilis* for the creation of "Confessional Poetry"—may have been right to have given that year's prize to W.D. Snodgrass's confessional *Heart's Needle* rather than Lowell's confessional *Life Studies*. When Lowell tried craft, J.V. Cunningham proved the better crafts-

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man. When Lowell tried learned drunkenness, John Berryman's first volume of *The Dream Songs* had already captured the field. When Lowell tried high-voltage effusions, Allen Ginsberg and Gregory Corso made him look lethargic. Randall Jarrell was a better critic, Delmore Schwartz was a better literary operator, and Lowell's students Sylvia Plath and Anne Sexton were more successful at self-dramatization.

But Robert Lowell was not just respected, or famous, or infamous, as his contemporaries aspired to be. He insisted—and succeeded in his insistence—that his work be judged by the standard of public responsibility. Of course, judged that way, Lowell was also a massive failure, as irresponsible a public poet as English literature has known since Percy Shelley.

The examples are endless. This is a man who, at nineteen, could become engaged, leave Harvard, knock his father to the ground for daring to say something less than complimentary about his fiancée, and then promptly abandon the fiancée to go study poetry with Allen Tate and John Crowe Ransom. (When Tate, trying to explain that Lowell was not invited to stay for the summer, joked that the house was so full he'd have to pitch a tent on the lawn, Lowell promptly went out and bought a tent.)

This is a man who could first make failed attempts to enlist in both the Navy and the Army, and then write an open letter calling the Second World War "a betrayal of my country." This is a man who could break his wife Jean's nose twice, once in a car accident and once with his fist. And what, besides unforgivable, are we to call his capping his career as a confessional poet by publishing extracts of his ex-wife Elizabeth's letters?

And yet, through it all, he somehow kept the public's ear. He had *gravitas*, we all agreed, and nothing could take it away from him. His conversion from Tate and Eliot's high modernism in *Lord Weary's Castle* to the confessional poetry of *Life Studies* didn't actually make his public thoughts private; it made his private life public.

The fact that he was a Boston Lowell helped, of course. But there was more to it than the last gasp of the Back Bay social world. Lowell took himself as seriously as America took him, and through it all, he wanted poetry to matter in a way that hardly anyone these days appreciates once seemed possible; his work aimed at the sum total of creation. For that purpose, his later fascination with the self and politics was a poor substitute for his early fascination with religion, but all his fascinations sought to provide his poems with the seriousness and public standing he felt they deserved.

Did they in fact deserve it? Now that the dust has settled, we can look back and decide. Lowell was always better at suggesting that connections exist than he was at explicating those connections; he was always better at showing us a mind that believes in a conjunction than he was at convincing us the conjunction is real. But so what? Much of the poetic mind is taken on faith, an agreement we make that poets' skill at language gives them some insight worth our time to pursue. "The Quaker Graveyard in Nantucket" ends:

You could cut the brackish winds with a knife
Here in Nantucket, and cast up the time
When the Lord God formed man from the sea's slime
And breathed into his face the breath of life,
And blue-lung'd combers lumbered to the kill.
The Lord survives the rainbow of His will.

Robert Lowell survives the rainbow of his own will—a little tattered, a little less important than we once thought him, but still alive, still the genuine thing. ♦

Can You Believe It?

The Gospel according to Elaine Pagels.

BY GARY A. ANDERSON

Elaine Pagels opens *Beyond Belief: The Secret Gospel of Thomas*, her newest book on early Christianity, with a moving account about a rare but fatal illness that afflicted her young son Mark. One morning, just days after hearing the bad news, she ducked into the Church of the Heavenly Rest in New York City to get out of the rain. As it happened, services were in progress, and Pagels was moved by the soaring harmonies of the choir and clear resonant voice of the priest. "Here is a family," she concluded, "that knows how to face death."

Jerry Bauer / Random House

Beyond Belief
The Secret Gospel of Thomas
by Elaine Pagels
Random House, 256 pp., $24.95

"What is faith?" Pagels pondered. "Certainly not simple assent to the set of beliefs that worshipers in that church recited every week ('We believe in one God, the Father, the Almighty, . . .')." These often-repeated clauses seem to Pagels "like barely intelligible signals from the surface, heard at the bottom of the sea." And here is where her scholarly quest begins. Moved by the dulcet tones of the liturgy but repelled by the forbidding idiom of the creed, Pagels poses her question: How did Christianity become synonymous with accepting a certain set of beliefs?

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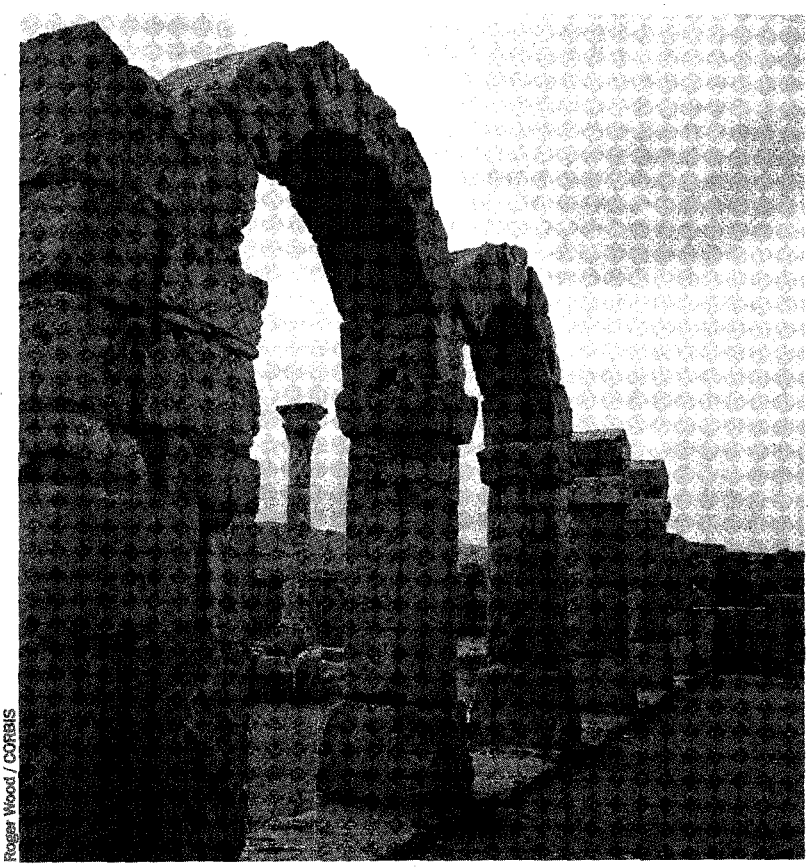
The problem began with the act of assembling the New Testament itself. According to Pagels the earliest group of Gospels, Matthew, Mark, and Luke (the so-called Synoptic Gospels), shared with the Gnostic Gospel of Thomas a more restrained sense of the identity of Jesus. He was not God but simply a great man. This ancient and happy state of affairs was muddled once the Gospel of John was added to the canonical collection and Thomas squeezed out. The result: Jesus, shockingly, is identified as God.

The audacious move of John to call Jesus "God" leads inevitably to a graver error, the restriction of the path of salvation to the way of Christ. Again, the Gospel of Thomas provides us with a more humane alternative: God was not restricted to a single group's hold on the truth. Truth is to be found by looking within oneself.

Early Christian thinkers were threatened by the audacious pluralism of the Gnostic camp and, armed with the Synoptics plus John, they moved to close it down by transforming Christianity into "a single, authorized set of beliefs." As a result, all subsequent religious experience was forced to conform to the straitjacket of orthodoxy.



Roger Wood / CORBIS

It is difficult to know how to respond to this remarkable assessment. If the reader gains the impression that Pagels has somewhat dangerously collapsed the historical gap between the first and the twenty-first centuries by making Gnosticism appear like a form of New Age religiosity, the impression would not be wrong. She recounts that once while having tea at a Zen center in San Francisco she treated the local roshi to an account of the Gospel of Thomas. This man exclaimed: "Had I known the Gospel of Thomas, I wouldn't have had to become a Buddhist!" For Pagels, Gnosticism is not a set of beliefs but a path of inner enlightenment. Jesus, like a good Zen master, answers his disciples with a koan whose purpose is to show the believer that "the capacity to discover the truth is within you." Eschewing the need to create a "unified church," the community that formed around the Gospel of Thomas put its emphasis on each person's search for God.

To my ear, this doesn't sound much like ancient Gnosticism, which was actually a highly elitist and esoteric movement. But even more of a problem is Pagels's characterization of the creeds of the Church. Lewis Carroll's line that the White Queen was capable of believing six impossible things before breakfast seems to be Pagels's notion of what is involved in reciting the creed. No doubt this is because she interprets the creed through her own inability to believe it. The book lacks any attempt to engage what the Christian theological tradition has said about the nature of the truth claims enshrined within the creed. One wishes that Pagels had followed the practice of Thomas Aquinas: Before refuting the position of your opponent you ought to represent his position in the strongest possible fashion. (Indeed a book that would have proved an excellent partner is Frances Young's brilliant study of the origin of the rule of faith and its continuing utility, *Virtuoso Theology*.)

Nicholas Lash, a theologian from Cambridge, wisely cautions us from applying a "container" model of truth to the creed. Rather, the creed is "a path or framework for the interpretation of [Scripture and the world around us]; it is a pattern according to which we learn not only that God creates parentally ("we believe in God, the *Father* Almighty, creator of heaven and earth . . .') but also that to be a creature is to be indwelt, inhabited, by the gift of God's own self." How on earth, Lash asks—echoing the words with which Pagels opens her own book—might we discover that this improbable suggestion is not only plausible but true? Not by any sort of empirical test. To affirm the creed is to dare to live one's life as though the creed were true. To confess belief in God the Father is to set one's life in God's direction. Every morning religious Jews put on *tefillin* as a symbolic expression of the joyful assumption of the yoke of God's lordship over their lives. For the Christian, the verbaliza-

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tion of the creed is, similarly, a pledge to assume that pattern of life that was laid down by Christ in the Gospels. When St. Augustine was asked what it meant to confess belief in God, his answer was cast in performative language: "It is believing to love, in believing to delight, in believing to walk toward God and be incorporated amongst the limbs or members of his body."

An ironic value of *Beyond Belief* is the window it opens into the motivation of Pagels's historical scholarship. The book itself, like some of her earlier volumes, was not written as a single text. It is a collection of independent essays, assembled to articulate a larger thesis. The editorial work, however, is noticeably weaker than in such past efforts as her 1979 *The Gnostic Gospels*. In particular, an enormous contradiction emerges between chapters two and four. In chapter two she makes the most unlikely claim that the author of the Gospel of John knew the Gospel of Thomas and reacted loudly and angrily against it. This claim, which even Pagels acknowledges is speculative, is initially hedged in by qualifications ("John *may* have met Thomas Christians," "he *may* have worried that").

But these misgivings give way at the end of the chapter when she asserts that the Gnostic teaching of Thomas was rejected by John. Indeed the bulk of this chapter is organized to show how the vigorous and uncompromising claim of John that Jesus is God led ultimately to the suppression of the more serene and humanistic teaching of Thomas.

But then chapter four opens with the observation—and it is a good one—that the first commentaries on the Gospel of John were composed by the Gnostics themselves. Indeed Origen's commentary on John was at least in part a reaction of the orthodox to the popularity of this Gospel among the Gnostics. How can John be the *bête noire* of chapter two but also the hero of chapter four? The only unifying factor is Pagels's need to score points against the orthodox. The canons of careful historical scholarship have been replaced by those of a spirited and overreaching polemic.

But things get worse: If Gnosticism is praised in chapter two as countering orthodoxy's claim to be the *single* true way, in chapter four Pagels notes with approbation the Gnostic writer Ptolemy's claim that his teaching "offers the *only* unerring way to comprehend reality" (the italics are Pagels). One might also point out that this same Ptolemy fashioned his own version of a "rule of faith" that looks very much like orthodoxy's nascent creeds. The main difference between Ptolemy's formulation and that of the orthodox is that Ptolemy claimed that the God in many parts of the Old Testament is not the God of the New Testament. As Rowan Greer observes, Ptolemy's conclusion implies "the Gnostic denial of the goodness of creation, the continuity of redemption with creation, and the identity of the God of Jesus Christ with the God of the Hebrew Scriptures." The strikingly anti-Jewish nature of the Gnostic doctrine of God, and orthodoxy's vigorous and vocal rejection of that Gnostic claim, is passed over in silence by Pagels.

I have spent a fair amount of my own research time reading Gnostic texts, and I must confess that my reaction to them is quite different from Pagels's. Rather than finding a simple exhortation to self-knowledge, I find them to be highly demanding literary artifacts that presume a high level of belief in a very detailed myth about creation. If the White Queen bragged that she could believe six impossible things before breakfast, the Gnostic adepts would need to multiply that by a factor of four, at least. Why Pagels happily swallows this camel while straining out the gnats of the creed is a mystery.

In her desire to explain how the impossible claims of the creed came to hold such a powerful grip over subsequent Christianity, Pagels focuses on the efforts of Irenaeus, the famous bishop of Gaul in the second century, and the conversion of Roman emperor Constantine in the fourth. The combination of the power of the bishop's mitre authorized by the seal of Imperial Rome signaled the demise of all movements that competed with orthodoxy.

Although this anticlerical position will appeal to many modern readers, it is altogether anachronistic to cede such power and authority to the Church in antiquity. Though bishops frequently claimed great power, in reality they possessed little. As Harry Gamble notes, the earliest Church was composed of "numerous and far-flung Christian congregations, large and small, [that] nevertheless retained a sharp awareness of their collective identity as the *ecclesia katholike* and affirmed their mutual relations through frequent communication." The result was not a highly centralized power structure run by a tiny elite of bishops but rather "a highly reticulated system of local communities that spanned the Mediterranean world but preserved a strong sense of translocal unity and cultivated contacts with each other."

The question Pagels ought to pose, but never does, is why this far-flung, highly decentralized network found the teaching of figures like Irenaeus and Origen so compelling in the absence of a larger power structure to enforce it. The governance of the Christian movement in the second, third, and even fourth centuries cannot be characterized in simplistic top-down terms; much of what now has come to be characterized as "orthodox" emerged from the ground up.

In sum, what we have in Elaine Pagels's *Beyond Belief* is a well-written account of why one educated woman finds herself unable to recite the creeds today—and why the Gnostics, rather than the orthodox early Christians, seem to her closer to the typical feelings of a twenty-first-century college professor.

My own advice to the perspective reader would be to read a precis of the Gnostic myth and recite its cosmology six times before breakfast. If this sits well with you, then proceed deeper. Most, however, will find the challenge beyond belief. ♦

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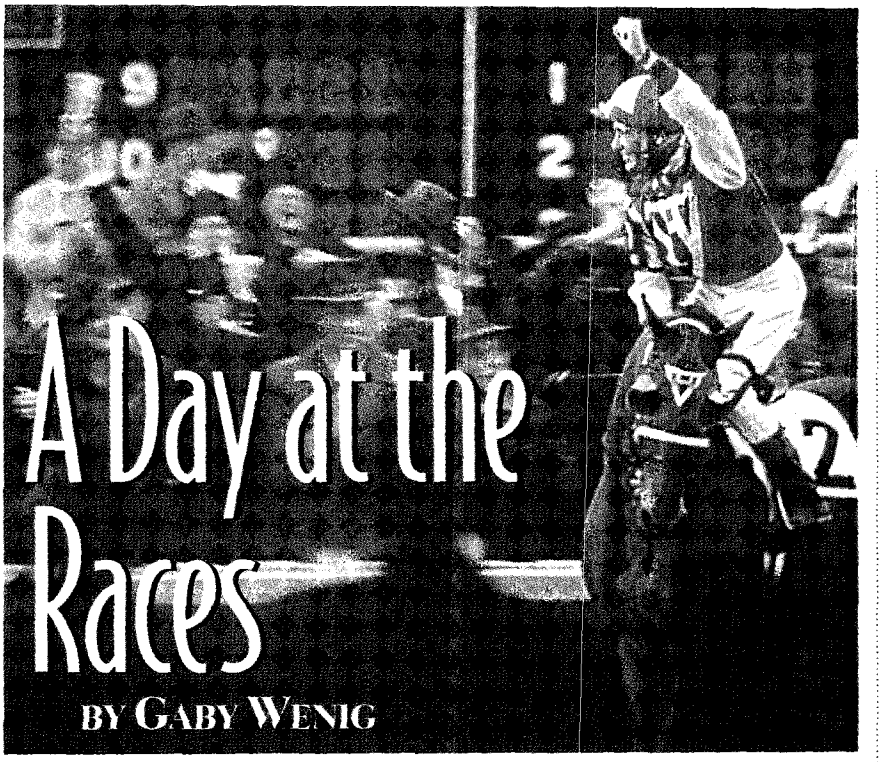

Universal Studios

A Day at the Races

BY GABY WENIG

Last week a friend and I made our way to Hollywood Park to watch a horserace—for the first time in our lives. Anticipating the glamour of the sport of kings, we found the charm of a littered Greyhound Bus terminal. Horseracing now is a bygone sport, a washed-up relic of the days when people thronged to the track in their smartest clothes to see equine stars of fabulous speed and beauty.

Such a horse was Seabiscuit, who ran during the late 1930s. Millions of fans followed his exploits by radio, and tens of thousands turned up at the tracks every time he ran. The horse's story was a classic one of triumph over adversity, as Gary Ross makes clear in his new film version of *Seabiscuit*, based on Laura Hillenbrand's bestselling book, *Seabiscuit: An American Legend*.

Back when Seabiscuit was thundering around the track, horseracing in America was in its golden age. Mechanical starting gates, saliva testing for doping, totalizator boards, and photo-finish cameras brought the sport into the modern era, and horseracing was one of the only industries not affected by the Depression. Legal betting suited down-on-their-luck citizens, and state governments eagerly accepted tax revenues from parimutuel gambling. Between 1929 and 1939, twenty-four new tracks were built across the country, an increase of over 70 percent. The racetracks were places to be seen for the social smart set and movie stars. Record crowds would turn out to see such star horses as War Admiral and Omaha.

As the sport became entrenched in the general culture, it also became a staple in movie theaters. Not only would theaters show newsreels of the races, but an astonishing number of Hollywood feature films focused on horseracing. In the 1930s alone, at least 115 movies featured horseracing of some kind. The sport found its way into such franchise cinema as the Marx Brothers' *A Day at the Races* (1937) and *Charlie Chan at the Racetrack* (1936), and it was the subject of screwball comedies, family dramas, and musicals.

For most of these films, the themes were the same. They capitalized on the notion that horseracing was a redemptive sport that could save one from financial troubles—and, more important, rehabilitate the reputations of both the horse and rider. Take *National Velvet* (1944), for instance, perhaps the archetypal horseracing movie. In that film, twelve-year-old Elizabeth Taylor stepped into movie history by cutting her hair short, donning jockey silks, and riding a horse called "The Pie" in the Grand National, a prestigious British hurdle race. Her fall from the horse only seconds before she reaches the winning post loses her the winner's trophy and purse. But that scarcely matters. Velvet rides purely because she believes in her horse, a beast she has tamed out of its obstreperousness with great dollops of love and trust.

National Velvet is a sentimental Hollywood confection that today seems cloying, but the notion of the purse being an adjunct to the rehabilitative powers of the track is a staple of horse films before and since. Such movies as *Broadway Bill* (1934), *Pride of the Bluegrass* (1939), *The Great Mike* (1944), and *Black Gold* (1947) were all tales of men, shunned by society, who managed to find redemption through a steed's run around the track. Occasionally an interesting horseracing movie would burst through, like the brooding *Boots Malone* (1952), a *noir* look at the world of jockeys, or *The Return of October* (1948), about a girl who believes her horse is her dead uncle. But for the most part the genre is as bland as old lettuce, the characters and the plot indistinguishable from one movie to the next.

The races lost their footing in the movies as national interest in the sport waned. In the decades since Seabiscuit was a national hero, sports fans have turned their attention to basketball and football. Other forms of legalized gambling, such as casinos or lotteries, diverted betting away from the tracks. The sport maintains a core group of fans and even something of a presence in popular culture (in Dick Francis's many racetrack mystery novels, for example), but there's little left in horseracing to rope in the uninitiated. A racetrack form guide reads like a sheet of hieroglyphics, and the intricacies of the races are lost in the blur of speed. It is also a sport that produces few reliable constants. Great horses, like Secretariat in 1973 or Funny Cide in 2003, blaze down the track for only a season or two before they are retired or put out to stud. Even in leading racing states such as Kentucky, tracks struggle to get the people through the turnstiles and have had to resort to installing slot machines on the grounds to boost attendance.

One of the reasons that Ross's *Seabiscuit* is so good is that it shows the racetracks' glory years. It is also a finely crafted movie about a horse that was the

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living embodiment of all the old horse-movie themes. This current version of Seabiscuit's story (there was an earlier one, *The Story of Seabiscuit*, a 1949 film that put Shirley Temple in an Irish accent and deleted all the interesting parts of the horse's story) recalls something of the visual poetry of Carroll Ballard's great 1979 film *The Black Stallion*, and the cinematic exhilaration of the 1983 Australian horseracing classic *Phar Lap*, the story of a cheap horse trained by his stable boy to become one of the greatest horses in history, only to die in mysterious circumstances.

Ross's film is unfortunately not as detailed as Hillenbrand's book, which is a sharply realized account of the horseracing world. Hillenbrand chronicles the lives of jockeys who starved, purged, swallowed tapeworms, and exercised in rubber suits to keep their weight down in order to perform in a sport where a silk cap lined with cardboard was the only protection against life-threatening injuries. Hillenbrand explores the seething and explosive mixture of politics and intrigue among racing stewards, horse owners, trainers, and journalists. Her second-by-second account of Seabiscuit's races explicates both the complexities of those two minutes down the track and the balletic lyricism of the rides, and her adroit use of cliffhangers (Is Seabiscuit lame? Will his jockey's shattered legs heal? Will War Admiral agree to a match race?) makes for a thrilling narrative.

Seabiscuit was a horse that almost didn't happen. His sire, Hard Tack, was so unruly that no breeding farms accepted him for stud and his owner was forced to use him on her own mares. The resulting colt was a short, fat, and lazy horse who ran with an "egg-beater" gait—his legs flying all over the place—and he struggled to finish in cheap claiming races (where horses can be entered for a specific price and can be purchased for that price). Seabiscuit was finally sold for the rock-bottom price of $8,000 to auto magnate Charles Howard, who employed the taciturn equine miracle-worker Tom Smith to train him.

Smith nurtured Seabiscuit's body with specially cultivated calcium-rich feed and dressed his legs with home-made liniments and knee-high bandages that protected them from cuts and bruises. He used Pavlovian methods to condition Seabiscuit to racetrack readiness. When Seabiscuit threw himself around in the starting gate, Smith bravely stood in front of him and tapped him firmly on the chest until he stopped, and then repeated the exercise until Seabiscuit was able to associate the starting gate with standing still. Under Smith's tutelage, Seabiscuit ate up the track. Even with enormous weight imposts, he outran almost everything that competed against him and won hundreds of thousands of dollars in purse money. In 1938 there were more newspaper column inches devoted to Seabiscuit than to Roosevelt, Hitler, or Mussolini.

Seabiscuit the movie is beautifully shot, moving, and compelling. Like the book, it is more a human story than a horse one. It concentrates on the lives of Howard (Jeff Bridges) and Seabiscuit's jockey Red Pollard (Tobey Maguire), both men who carry shattered hearts when they come upon the horse. Howard's son had died in an accident, and Red had been abandoned at the racetrack as a teenager and forced to fend for himself in the violent and incorrigible world of horseracing. Bridges plays Howard as the garrulous showman whose boisterous antics are palliated by his pensive melancholy, and Maguire's Red is a study of quick-tempered fury and intensity.

Seabiscuit's victories give them something to hope for. Not only do they ease Howard's pain and Red's anger, but, as the film argues through its use of black and white still shots of the Depression, they gave a suffering country something to hope for. "Everybody thinks we took a broken down horse and fixed him," says Red. "But they were wrong. He fixed us. Every one of us."

The film glosses over many aspects of the story, omitting altogether the long-standing rivalry that Howard had with the racing stewards over the large imposts that Seabiscuit was made to carry in the races. The film captures few of the tensions that pervaded the Howard stable: The four-year quest to win the "Hundred Grander" Santa Anita Handicap was a prolonged exercise in frustration for the Howards, and Seabiscuit's inability to run on muddy tracks meant that he was often scratched right before the races, leading to excoriation from the press, and disappointment from all his fans.

The script also ignores the flamboyance of the real Marcela Howard, who, like her husband, courted the press with her wild antics such as shooting a lion on safari. In the film, Marcela (Elizabeth Banks) seems only to be a decorous piece of period-clothed eye candy, whose main job is to stand next to her husband and smile.

But the film's success comes from its assured hand in demonstrating the greatness of the sport. Together Red and Seabiscuit are a centaur, and the shots of them flying across the tracks recall some of the great mythical and historical partnerships of man and steed. In the racing scenes, the camera moves from wide shots of the horses thundering down the track to extreme close-ups of Maguire working the reins, the images shot from side on and front, the choppy editing allowing the thrill of the ride to ripple through every shot like an electric current. These scenes manage to capture the velocity of being astride a thousand-pound creature that moves with grace and agility at dizzying speeds. And then, to temper the excitement, the film evokes the catch-in-the-throat realization that through these races, and through this horse, these physical and emotional cripples can become whole men.

Seabiscuit is a film worth seeing. It captures the glory of a former time and charges an undistinguished film genre with a shot of adrenaline. The movie carries the audience through the fiery roar that rises up from the racetrack crowd when the horses make the final turn. It transports us, too, with lightning speed, away from the tawdriness of the tracks today and down the straight to redemption. ♦

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The Crash of Top-Down Reform?

John E. Chubb is chief education officer, Edison Schools; distinguished visiting fellow, Hoover Institution; and member, Hoover's Koret Task Force on K–12 Education.

If school reform comes in waves, the latest, and some would say greatest, wave of reform may have just crested. The idea that public education can be reformed by setting high standards and holding schools accountable for reaching them is showing unmistakable signs of crashing. **Public education is finding ways to comply with accountability standards without really improving.** This spring three critical examples emerged.

April 2003 marked the twentieth anniversary of the landmark federal study *A Nation at Risk (ANAR),* giving journalists and researchers occasion to look back at the fate of some of the study's key recommendations. In a Koret-sponsored study, *Our Children and Our Future,* and in a front-page story in *Education Week,* we learn that high school students today are taking more academic courses than students were in 1983—but not learning any more. From 1982 to 1998 the percentage of students taking the "new basics" recommended by *ANAR* jumped from 14 percent of graduates to 56 percent, but high school test scores on the federal National Assessment of Education Progress have barely budged. What *ANAR* failed to anticipate when it called for higher standards was the apparent watering down of tougher courses to make them more palatable.

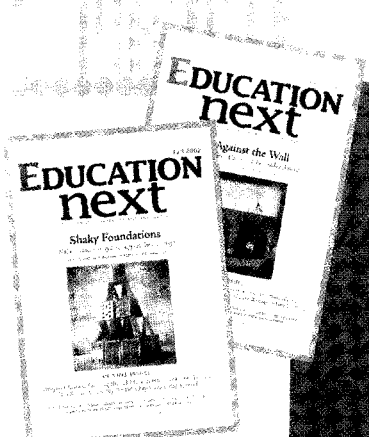
But states did not stop with increasing high school course requirements. During the 1990s many states began requiring students to pass standardized tests to receive their high school diplomas. In the last year, however, at least five states—including trendsetters California, Florida, and Massachusetts—have relaxed their testing standards because too many students, after satisfying their course requirements, would have been denied diplomas based on their test scores.

The retreat on standards is not taking place just in high schools. In 2002 President Bush and Congress agreed on tough achievement standards for grades 3–8 in No Child Left Behind (NCLB), legislation hailed by many as historic. For the first time the United States would have something akin to the standards that other high-achieving nations have had for years. But faced with large numbers of schools that are failing to make "adequate yearly progress," states have begun lowering the federal standard. NCLB requires that all public schools bring all students to "proficiency" within ten years but leaves it to the states to define proficiency. In recent years many states had set tough proficiency standards, but with their schools now threatened with federal sanctions, states are lowering their definitions of proficiency.

Students and their families are the losers, but they need not be. **Before standards and accountability come crashing down altogether, policymakers should remember that there is another wave of reform that has also been sweeping the nation**—and that holds a prominent place in NCLB: school choice. Give families the right and the means to choose for their children schools that are achieving—other traditional public schools, new public charter schools, even private schools—and force schools to compete for their students. Parents will select schools that meet high standards. Schools that try to skirt standards will not be chosen and will be driven out of business. Through school choice, the nation might ride the accountability wave to higher standards and scores.

— *John E. Chubb*

Paid for by the Hoover Institution, Stanford University.



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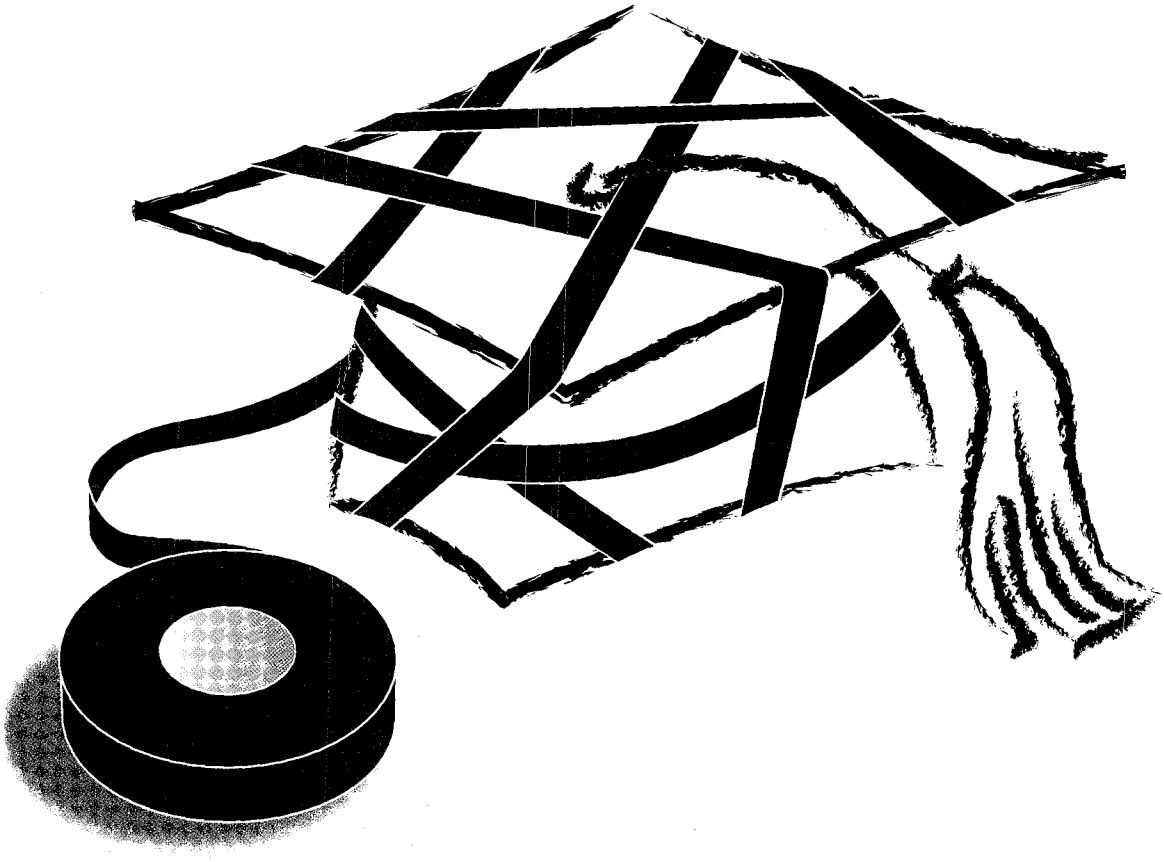

Could financing a degree mean going through the third degree?

If Congress fails to renew the Fair Credit Reporting Act (FCRA), a patchwork of conflicting laws administered by the states would be put in place. The resulting bureaucratic nightmare of red tape would make financing a college degree a real test of endurance. And things like obtaining a mortgage or financing a new car could also become far more time consuming and expensive.

That's why Congress needs to protect the national consumer credit system we already have. FCRA established a nationwide, streamlined system of consumer credit that works. It ensures accuracy, fairness and confidentiality for consumers as well as an unprecedented level of choice and service. Find out how that system works for you by visiting our Web site at *www.ProtectConsumerCredit.org.*

PARTNERSHIP TO PROTECT CONSUMER CREDIT

Giving Americans the Credit They Deserve.

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